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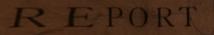
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OF THE

# FOURTH ANNUAL MEETING

OF THE

# GEORGIA BAR ASSOCIA

HELD AT

# ATLANTA, GEORGIA

August 3rd and 4th, 1887.

ATLANTA, GEORGIA:

BYRO & PAUTILLO. PRINTERS, 13 AND 15 EAST HUNTER
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## GENERAL MINUTES.

## FIRST DAY'S PROCEEDINGS.

ATLANTA, GA., August 3d, 1887.

The Georgia Bar Association met in Fulton Superior Court-room at 10 o'clock A. M., and was called to order by the President, Hon. Clifford Anderson.

The President: Gentlemen of the Bar Association: The hour has arrived, and the meeting of the Association will be opened, and I now call the meeting to order.

Mr. W. R. Hammond: Mr. President, I learn that our distinguished visitor, Judge Cooley, is in the city, and I move that a committee of three be appointed to visit him and request him to attend the session of the Bar Association:

The motion was carried.

The President: I will request Judge Hammond, Major Bacon and Captain Mercer to act upon that committee

The President here read his annual address. (See Appendix.)

The President: The next business in order is the report of the Executive Committee, of which Judge Marshall J. Clarke is chairman.

Mr. Dessau: Mr. President, I have been requested by the chairman of the committee to make a report for him. The programme, as provided by the Executive Committee of the Bar Association, is as follows for the morning\_session and for to-day:

### MORNING SESSION, IO A. M.

- 1. Address by the President, Hon. Clifford Anderson.
- 2. Report of Executive Committee, Judge Marshall J. Clarke, chairman.
  - 3. Report of the Treasurer.
  - 4. Election of members.
- 5. Paper by John W. Akin. Subject, "The Circuit Judge."
  - 6. Reports of standing committees.
- (a). On jurisprudence and law reform, Judge Wm. M. Reese, chairman.
- (b). On legal administration, etc., Hon. J. C. C. Black, chairman.
- (c). On legal education, etc., Hon. George A. Mercer, chairman.
  - (d). On grievances, Hon. L. F. Garrard, chairman.
  - (e). On memorials, Hon. J. H. Lumpkin, chairman.

### AFTERNOON SESSION, 4 P. M.

- 1. Election of officers.
- 2. Paper by Hon. I. E. Shumate.
- 3. Reports of special committees.
- (a). On legal ethics, Hon. Julius Brown, chairman.
- (b). On legislation recommended by Association, Judge W. R. Hammond, chairman.
  - (c). On prize essay.

### NIGHT SESSION, 8 P. M.

Address by Hon. T. M. Cooley, of Michigan. Subject, "The Uncertainty of the Law."

All the sessions will be in this room. The Executive Committee begs leave also to submit in its report that it

is advisable to dispense this year with a banquet. They have determined that it is advisable to have a banquet every other year, and as we had one last year, we will not have another until next year.

The Committee attended to the publication of the various papers which were produced at the last meeting of the Association, and through the Secretary distributed three thousand copies of Judge Bleckley's address, and fifteen hundred copies of President Cumming's address.

The Committee begs leave to report the names of the following gentlemen who have been elected as members of this Association:

Benjamin P. Hollis, Americus, Ga.; Robert Hodges, Macon, Ga.; W. A. Wimbish, Atlanta; W. S. Thomson, Atlanta; J. T. Holleman, Atlanta; James T. Nisbet, Macon; Charles Z. Blalock, Atlanta; Charles D. Hill, Atlanta; J. C. Jenkins, Atlanta; W. N. Spence, Camilla; W. W. Fraser, Savannah; L. Z. Rosser, Atlanta; F. R. Walker, Atlanta.

That is all, sir, that the Committee has to report.

Mr. Bigham: Mr. President, am I in order to ask a question of the Executive Committee?

The President: Yes, sir.

Mr. Bigham: I would like to inquire of the Committee if any arrangements have been made looking to an interchange of our proceedings with the Bar Associations of other States—if that subject has been considered by them.

The Secretary: Mr. President, in reply, as a member of the Executive Committee and as Secretary, I will say that, although the Executive Committee have taken no action, as a committee, upon it, I have endeavored to establish such an interchange with all publications, and regret to report that, to my surprise, I have met with very little success. It seems that most all the other state associations change their secretaries every year, and

the addresses which have been furnished me from time to time have often been misleading, and replies would come to my letters that the gentleman to whom I had written had resigned, but he would forward my letter to the Secretary, and that would be the last I would hear In fact, there are only four or five associations in the country that publish annual reports. The reports of the states of New York, Alabama and Ohio are the only ones that I have received, and although there are quite a number of them that nominally have bar associations, I believe they are the only three that are so successfully operating their associations as to get out every year a respectable volume of proceedings. We recognize the value of this interchange to which Judge Bigham calls attention, and realize, if it could be done, a library might be accumulated that would be of use to the Association. I have endeavored to bring it about, as I have written a great many letters trying to bring it about, but with only the partial success I have mentioned.

The President: I will state in that connection that I received a letter a few days ago from a member of the bar of Florida, desiring to be furnished a copy of our Constitution, with a view to the organization of a State Association in Florida. I will turn it over to the Secretary during the day. The next business in order is the report of the Treasurer.

Mr. Barnett, the Treasurer, read his report. (See Appendix.)

The President: Is any action proposed on that report? If not, it will be considered as received for information. The next business, according to the order of business, is the election of members.

Mr. Dessau: Mr. President, the names have been reported, and under the rule adopted by the committee, no election is necessary. The committee has the

power, under the Constitution and By-Laws, to take these gentlemen in as members; they are all properly vouched for.

The President: A paper will now be read before the Association by John W. Akin, Esq. Subject: The Circuit Judge. Mr. Aiken will please take the stand.

(Mr. Aikin read a paper, which will be found in the Appendix.)

The President: The next business in order will be the reports of standing committees.

Mr. Bacon: Mr. President, before that is done, I am instructed by the committee appointed by this Association to wait upon Judge Cooley, that we obeyed the command of the Association, but that Judge Cooley was not at the hotel. We reduced the invitation to writing and left it for him, and hope that he will honor us with his presence.

The President: The first standing committee on the list is the Committee on Jurisprudence and Law Reform, of which Judge Wm. M. Reese is chairman. Is that committee ready to report? (A pause.) There seems to be no response. I do not observe Judge Reese in the room. I will call therefore for a report from the Committee on Legal Administration, of which the Hon. J. C. C. Black is chairman. (A pause.) Mr. Black is not present. If any member of that committee is prepared to report, we shall be glad to hear from him.

Mr. Geo. Hillyer: Mr. President, perhaps it will be proper to remind the Association that, owing to difficulties in transportation east of the city, it is likely that gentlemen coming from the direction of Washington or Augusta may arrive at 1 o'clock or at some later hour during the day, and that may be the cause of neither of those gentlemen being here, so that, if the opportunity be offered, possibly those committees may report later in the session.

The President: Is there any report from the committee on legal education, of which the Hon. Geo. A. Mercer is chairman?

Mr. Mercer: Yes, that committee has a report.

The President: Take the stand.

Mr. Mercer: Mr. President, I want to state to the Association that Gen. Lawton is chairman of the committee, but his absence from the country has devolved the chairmanship upon me, and I have been instructed to make a report in behalf of him. (See Appendix.)

The President: The next committee on the list is the Committee on Grievances, the Hon. L. F. Garrard, chairman. Is that committee ready to report? (A pause.) There being no response from that committee, the next committee in order will be the Committee on Memorials, of which the Hon. J. H. Lumpkin is chairman.

Mr. Lumpkin: Mr. President, I shall be compelled to crave the indulgence of the Association on the report. Some time since, anticipating that I would be called away from the State at this time, I reported the fact to the Secretary, and requested that another member of the committee should be appointed chairman. Mr. Collier has died during the current year, and under my suggestion to the Secretary, arrangements have been made for another member to prepare a memorial. It has not arrived yet, so far as I have been able to ascertain, and I will beg leave, when it arrives, to have it printed with the proceedings of the Association.

The President: Unless objection is made, it will be considered in order to print that memorial, when it comes, in the records of the Association. That exhausts the list of business for the morning session, unless it is the pleasure of the Association to take some action upon the reports that have been presented at this time.

(The report referred to subsequently arrived, and is printed in the Appendix.)

The Secretary: Mr. President, as the hour of adjournment has not yet arrived, the usual hour being one o'clock, I rise to offer a resolution for the purpose of bringing before the Association the very admirable report of the Committee on Legal Education and Admission to the Bar. The Association will remember that this report indorses all that was contained in a report made at the last session, that is, the requirement of a It goes, however, beyond the prowritten examination. visions of the former report, and I confess that it seems to me that all of its suggestions are admirable and tenable. and I do not believe that there is any subject that will come before this Association that at all compares with the importance of this question. It does not seem to me, Mr. President, that this Association can justify its existence unless it does promote some reform in admission to the bar. Only a week or two ago the foreman of a grand jury of a county near Bibb stated to me this fact: that at a previous term of the court an applicant for admission to the bar applied to him for the loan of ten dollars with which to pay his license fee. gentleman, having the money, loaned it to him, and the successful candidate for admission to the bar sat down to write a receipt for the ten dollars, and when he got through, he signed it with his mark. Now, sir, I do not mean that the applicant could not write his name; the applicant was able to write his name, but he had a father who could not, and who was accustomed to having his name written and having his mark added to it; and this man was so deficient in the elementary principles of education as to believe it was necessary to sign his name, and then to put his mark to it. I say that unless this Association makes some reform in a system of things that renders such scandalous transactions as that possible, we will not be able to justify our existence.

I very well remember the discussions that have taken place on this subject at previous meetings, and I wish to

state as a fact which ought to have its bearing on any future discussion that is had here, that in the discussion in 1884, at the close of the first day's discussion, it was distinctly proposed that the question then submitted to the body upon the adoption of that committee's report (I mean the report prepared by Maj. Cumming), should be a test vote, and that all of those who were satisfied with the existing state of things should vote to lay the report on the table, and all of those who were dissatisfied with the existing state of the law, although they might not necessarily approve all the provisions of that report, should vote otherwise. I state as a fact which I recorded at the time as Secretary, and which was published, by the way, in the Constitution, although it was not a proper record to make of it in the proceedings, and I think does not so appear, but I state it as a fact that upon that vote there were two to one of a very large attendance of this Association that voted their dissatisfaction with the existing state of things, and believed that there ought to be reform. Now it strikes me, although I have not given this subject thought, that the suggestions of the present committee relieve the objections which were urged with great force against the measures submitted at the previous meeting, and which caused them to be laid upon the table. I remember there was a great objection to the provision which required the board of examiners to be in Atlanta, and required all applicants to come here and stand their written examinations. The objection was based on the merits and misfortunes of the mythical poor young man, who would not be able to get in the bar if we had such a rule as that. I think the poor young man who cannot come to the front is a myth. If there is enough grit in him, he cannot be kept back. For my part, I would vote, without any fear of ever crushing out rising genius, for a measure that would put some form of restriction around this free and open admission to the bar. This objection is obviated by the provisions of this report. There is no young man in this country that will be too poor to travel

far enough to stand a written examination inside of his own circuit by commissioners, in accordance with the

provisions of the present report.

Now I recollect that the report that was previously laid upon the table was objected to upon another ground. It required a study or preparation of three years originally, and I believe was finally changed by the committee to two years. This report is more conservative than that; it requires a preparation of only one year. Now the objection made to requiring any specified time in preparation was, there were some born lawyers, some wonderful geniuses, who could come to the bar in less time. It was said, if a man has ability, in six weeks study, to answer all the questions that should be propounded to an applicant for admission to the bar, let him come in. If he is smart enough to do it in ten days, let him come in.

There is another mythical character,—that born lawyer that in an incredibly short time, in a time less than a year, can fit himself to discharge the duties of a lawyer. I say he is a myth, and we need not trouble about his case in our recommendation to the Legislature. It strikes me these recommendations are conservative, practicable and tenable. They seem to me to meet all the objections urged in previous debates to the recommendations heretofore. The resolution I offer is that the committee which is now charged with the duty of preparing a bill to be submitted to the Legislature, with the approval of the Association, requiring written examinations, be also requested to add to that bill the other features of the present report, that is to provide also for this commission in each circuit, by whom the examinations should be conducted.

Mr. Hoke Smith: Who is that committee?

The Secretary: Mr. Hammond is chairman.

Mr. Hammond: I can state who the committee are. Mr. Miller, of Augusta, Mr. Peabody, of Columbus, Judge Reese, Mr. Walter Hill and myself are the com-

mittee. That was a special committee appointed at the last meeting to prepare certain bills; it is not a standing committee, and therefore I think the resolution would not be a proper one. There ought to be a resolution to refer it to a standing committee, or to the committee now pending. That was a special committee for a special purpose.

Mr. Smith: Mr. President, I move that the committee that has just presented this report be requested to prepare a bill embodying the suggestions contained in the report, and have it ready to-morrow at the time I understand from Mr. Meldrim this body is to act upon the report. Under the order of business, this body acts upon the report to-morrow; can it act to-day?

The Secretary: That is for the chairman; I presume the matter is in order now.

The President: I do not think the rules of the Association prescribe any specified time.

Mr. Meldrim: I notice that by-law No. 5 provides-

"This order of business may be changed by a vote of the majority of the members present."

I would therefore move that action be now taken upon the report of this committee, and if we have a majority vote upon that, that will be sufficient to carry it.

Mr. Smith: I second that motion.

The President: The chair is under the impression that no motion is necessary to change the order of business. This report is now before the Association for such action as may be proposed, and it is in order to move its adoption at this time, or move that it be laid on the table.

Mr. Smith: Mr. President, I move that the committee from whom this report has just been received be requested to draft a bill and present it to the Legislature, embodying the suggestions contained in the report.

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Mr. Akin: Mr. President, allow me to ask for information, does that report prescribe that no man shall be admitted to the bar before he is twenty-one?

A voice: Yes.

Mr. Akin: I am opposed to that provision. I am past twenty-one myself, and I am at the bar, so I am not interested in it. I believe the old custom was, whenever any young man wanted to come to the bar and was not twenty-one, an act of the Legislature was passed allowing him that special privilege. I presume if Legislatures are as accommodating in the future as in the past, they will pass the same kind of statutes for anybody else who will apply. Now, then, I think we should not put upon record here that we are opposed to any young man coming to the bar before he is twenty-one. My own view about this is—of course I submit it with great deference to the superior wisdom of gentlemen around here—my own view is that there should be no disqualification on account of age. I think some young men are as old at twenty-one as others are at thirty, and I believe that any man ought to be permitted to accept any office or to enter upon the discharge of any business when he is capable of it, no matter what his age. The safeguards thrown around admission to the bar by this report are ample to exclude from the bar any unworthy applicant, and it seems to me an unnecessary provision, and contrary to what we know of human nature and the relative strength of mind.

Mr. Bacon: I would suggest that the motion be amended by directing the committee to report a bill to the body to-morrow for their examination and discussion. The resolution as presented by Mr. Smith simply requests them to prepare a bill and lay it before the legislature. I would make that suggestion, as I am friendly to the proposition. I, in the main, agree with the suggestions embodied in the report, though I must say I am inclined to believe with the friend who last spoke.

Mr. Kibbee: Mr. President, I move, in order that the General Assembly might have proper information as to the views of the Association, that the committee who made the report should be charged also with the drafting of a bill expressive of the views of the Association in regard to the changes that were to be made, or that they thought desirable to be made, in the manner of admitting applicants to the bar. If the committee should draft the bill directly and present it to the General Assembly without the action of this Association, it would not carry with it anything more than the personal opinion of the committee; therefore it should be submitted to the Association and action taken upon it by the Association.

Mr. Smith: Mr. President, I think to direct the committee to draft a bill embodying the provisions of the report and present it to the Legislature would be a most positive action upon the report. It would not simply endorse the report, but would direct the committee to carry the report into execution.

The President: There is but one motion before the Association, that is to authorize this committee to prepare a bill and present it to the Association. The other suggestions have not been acted upon, and unless they are put in the shape of motions, the chair cannot entertain them.

Mr. Smith: Mr. Chairman, I was conferring for a moment with the committee.

The President: The motion is to authorize the committee which made this report to prepare a bill, and by the sanction of the Association to present it to the General Assembly. That motion has been seconded. Mr. Bacon has suggested that the bill be reported and submitted to the Association for its approval, but that was a mere suggestion and was not put in the shape of a motion.

Mr. Dessau: I hope Major Bacon will put his suggestion in a form to be considered by this Association. I am satisfied the suggestion is a reasonable one.

Mr. Smith: I have just been talking with a member of the committee—two of them—to see if they could prepare a bill before we adjourned. The only reason I presented the motion in the shape I did, was that at first they did not think it would be possible for them to prepare a bill between now and to-morrow, but I think the committee are willing to undertake it, and I am perfectly willing, if Major Bacon makes that suggestion, to accept it as an amendment to the motion I made, and offer that as the motion.

Mr. Bacon: It will not be an easy matter to have any bill on this subject passed. It will be a very difficult matter: and for that reason, being very earnestly myself in favor of the passage of some bill which shall to some extent remedy the great evil, I am very anxious to see such directions given to it as will accomplish in the main, if not altogether, what we desire. I think that every feature that is put upon this bill that is not essential to the main feature, to-wit: the securing of a proper preparation, will be a condition laid upon it which will endanger the successful passage of it. Take, for instance, the feature alluded to by Mr. Akin. I am quite sure that that will be a matter upon which there will be division. I am inclined to agree with him, that the other provisions of this proposed bill, if carried out, will be a sufficient guarantee that no young man will be prematurely admitted to the bar unless he is of such a precocious development as will entitle him to it. suggestions which I proposed I will not submit in the shape of a motion unless it seems to meet with the approbation of the Convention. I make these remarks in order that the Association might see the object I had in view, and appreciate the reasons which actuate me.

It is a very easy matter for us to pass a resolution, or even to prepare a bill and hand it to the Legislature. When we have done so, we all go to our homes, there is no one of us to look after it, and the matter is respectfully received by the Legislature; it is reported to its appropriate committee; no one champions it particularly, and it dies. That is the history of a great many very worthy measures which are brought before the Legislature, which fail because of proper engineering in the beginning. What we need, and what will be absolutely necessary to insure success, is the co-operation of the leading spirits of the Legislature.

It just occurred to me here while this discussion has been going on—I may be in error, and I would be glad to have the opinion of gentlemen present as to it—the first thing we should give our attention to is to endeavor to enlist the leading spirits of the Legislature to co-operate with us. It strikes me that the most practicable way to proceed will be to instruct this committee to communicate with, say, the judiciary committees of the House and Senate both, and invite a conference with them, and lay before them this report, and ask them to co-operate in the provisions of the bill to which they can give their support. If you can get their co-operation, if you can get them enlisted in it, you have accomplished a great deal which may result in success. honest judgment is, to prepare a bill, however perfect it may be, and however unanimously it may be supported by this Association, and turn it over to the Legislature, is simply to consign it to the desk which shall contain defeated bills.

I do not wish to impede the progress of the Association in this matter by offering any substitute to the motion of Mr. Smith. If my views do not meet with the approbation of the Association, I prefer they shall go on in the course indicated in the resolution proposed by Mr. Smith. I would be glad, however, if gentlemen would consider these suggestions,—that we could not very probably secure success. If this committee, instead of attempting hastily between now and to-morrow to prepare a bill, should be intrusted by this Association

with the responsibility of conferring with these gentlemen, and asking them to co-operate with them, I think that would promise success more certainly than any other course we could pursue. At the same time it would not place this committee in the embarrassing position of offering a hastily prepared bill.

Mr. Smith: Mr. President, I think the suggestions of Mr. Bacon are most admirable, and if these suggestions can be carried out, it seems to me we will be much more apt to accomplish such legislation than if the other course was taken. To carry out the suggestions, it will be necessary to take up the report and say how far this body endorses the report, whether or not the provision with regard to age should be stricken, and to see if any other suggestions are to be made by this body, and then, I suppose, request the committee to confer with the two judiciary committees, and, if possible, to see whether the committee can agree with the judiciary committees, see whether they can agree upon a bill embodying, as nearly as possible, the views of the Bar Association, and I am perfectly willing to withdraw the motion which I made, and to let the matter take that direction, because I think it would be a wiser and a stronger course.

Mr. Lumpkin: Mr. President, that could be very readily tested by merely moving to adopt the report of the committee, and then any special feature in it could be discussed, and the Association could either approve or disapprove it, and thereby you could outline what the Association thought about the entire matter, and the committee could then be intrusted with the power, under that outlining, to hold conferences and make suggestions; and in order to bring that matter to a test, I move the adoption of the report of the committee.

Mr. Broyles: Mr. President, I do not think it is wise in this body to adopt that report. I do not think there is anything wrong in the report, but I do not think there is anything useful in it, and I do not think we

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ought to do anything in the way of a solemn resolution of this body that does not contain something useful.

I understand the great object of the report is to have written examinations of candidates for admission to the bar instead of oral examinations. I cannot see for myself how that is going to make a man better qualified for the bar, because he has answered the questions propounded to him in writing, than orally. It might do to show whether he could write or not, and it might fit the case of my brother Hill from Macon, and in that it would be evidence that the man could write at least. We ought not to legislate for ignorant persons like the case Mr. Hill speaks of, or for geniuses. It seems to me if a young man has studied law and comes into this court house, if he can answer questions orally, quickly and to the point, that would be evidence that he knows the law just as well as to take time to write the question and then give him time to write the answer. I will admit that the principle of written examination is a good one in schools and colleges, because the very fact of putting your knowledge in such a shape as to put it in writing, clears it up and makes it more intense. But we do not expect to make a lawyer by examining him at all, nor teach him the law. It will simply teach us what he knows. I do not think that one examination of a student when he goes to be admitted will make him any better lawyer. If what I say is true, then I cannot see any use of going to the Legislature and asking it to pass a law upon that matter that will be of no service to Besides, it will be more troublesome, more inconvenient. We all know how law students are examined. If we want to examine a law student thoroughly, we certainly can do it quicker in an oral than in a written examination, and the complaint is the courts do not have time enough to devote to the examination of these law students. If you require them to go to writing about it, the court will have less time. They can go faster orally than by writing. As I say, I have nothing specially against the bill except that, and I do not think

the Legislature would pass it if we requested them to do it. My idea is, it will be of no real benefit to the cause of legal education to require written instead of oral examinations.

The President: I would like to enquire of the Executive Committee, did I understand by the report this morning that the hours of meeting and adjourning are fixed?

Mr. Dessau: Only the hour of meeting this afternoon and the hour of meeting to-night were fixed, but the committee did not fix the hour for adjournment, because it might not be practicable to adjourn at the hour fixed.

Mr. Mercer: Mr. President, I would like to say that the gentleman who has just spoken (Col. Broyles) made one mistake in reference to this report. His argument is, that it will consume more of the time of the court. Under the report of this Committee, the court has nothing at all to do with the examination. The examination is had out of court by a board of commissioners, and upon their favorable report to the court, the court simply grants the license—the court has nothing to do with it.

Mr. Bacon: Mr. President, I would suggest that we have these examinations in public. I do not think it best to colonize any of the business of a court outside of the court-room itself, and this is one of the most important pieces of work that the court will do,—the ascertainment as to whether the applicant is a suitable applicant, and his admission or rejection from the bar. Again, I agree with the gentleman on the right as to written examinations. I would so far modify my views upon that subject, and the views of the committee, by holding, with great respect, that the examination should be made either in writing or orally, as the court may direct. You want something practicable, if you adopt this Who is to prepare these written exammeasure here. inations? What lawyer is there in the court, who has business engagements upon the circuit, that has the

time to sit down and prepare a written examination? We have either got to do that on each occasion, or we have got to have a regular set of questions and answers, upon which the students are to prepare them selves—these questions to meet all occasions. It seems, therefore, to me, sir, that it is proper, if we adopt this report, to move to amend. I would suggest that we amend it by the provision that the examination shall be oral or written, as the presiding judge may direct, and that it shall take place in public.

Mr. Shumate: Mr. President, I think it is quite evident that if we attempt to adopt this report, it will open discussion which will last longer than we have time to devote to it. As soon as we begin to analyze it, quite a number of gentlemen will object to this feature of it and that feature of it. It opens up a very wide field of debate, and I hardly think this place the proper place to debate it. I do not know that it is necessary to adopt the report. I cannot now point out any feature to which I would personally object. I think it is an admirable report, but evidently it opens this wide field for discussion, and a discussion would not amount to a great deal. How would a resolution of this sort do?—I merely suggest it:

"Resolved, That the report be received, and the Committee be requested to confer with the Judiciary Committees of the Senate and House of Representatives with a view of having embodied into a statute such suggestions and recommendations as said legislative committees may approve of."

The President: You offer that as a substitute?

Mr. Shumate: Yes, sir.

Mr. Bacon: There is no formal resolution pending.

Mr. Lumpkin: I will accept that in lieu of my motion.

The resolution offered by Mr. Shumate was then put to the house and adopted.

Mr. W. R. Hammond: I move that the Association adjourn to 4 o'clock.

Mr. Bacon: Mr. President, if the gentleman will withdraw the motion for a moment I will be glad. We were about to present a matter to the Association in connection with the matter right now before it.

Mr. Hammond: I will withdraw the motion.

Mr. Mercer: Mr. President, of course we are all united in a common purpose. It happens that not a member of the present committee is a resident of Atlanta. I would offer a resolution that a special committee of five lawyers resident in Atlanta be associated with this present standing committee for the purpose of submitting these questions to the Judiciary Committees of the House and Senate.

Mr. MacIntyre: Mr. President, as we have some members of this Association that are in the Legislature, would it not be better to put some of those members on that committee if they are in the house? I take it for granted that some of the lawyers in the Legislature, from your address, belong to this Association. If that be true, I just simply suggest that some of those lawyers be put upon that committee, because they are not only in Atlanta, but they are in the Legislature itself, and if they tried, they could have even more effect than lawyers in Atlanta. I would suggest that we leave that to the chair, and not restrict it.

Mr. Mercer: I will accept that. I will say five members, leaving it for the chair to say who they will be.

The President: The motion is that a special committee of five be appointed by the chair to co-operate with the standing committee in carrying out the resolutions which have just been adopted; or, to state it differently, that five additional members of the Association be appointed to operate with that standing committee in car-

rying out the resolution, and these members be selected by the chair.

The motion was carried.

Mr. Meldrim: Mr. President, I beg to say this to the committee: One of the members of the standing committee, Gen. Lawton, is absent. There is a great deal of work for that committee to do probably for the next two or three days, and I would move that the chair be authorized to appoint the Hon. A. O. Bacon in his place on that committee.

Mr. MacIntyre: I suppose Mr. Meldrim understands that Mr. Lawton was chairman of that committee, but we already have another chairman. Your motion is to let Maj. Bacon take his place—

Mr. Meldrim: No, sir; let him be added to the committee.

Mr. MacIntyre: And let our present chairman be chairman of the committee?

Mr. Meldrim: Of course.

The motion was carried.

The Secretary: Mr. President, before adjournment allow me to make one or two announcements. The first is that I have here in Atlanta reports of the previous years, and that new members elected can obtain the previous reports, if they desire them, by paying the amount the Association has already fixed as a charge. The Association has decided that members coming in after the first year should pay 50 cents for each volume of the past proceedings which they desire, to obtain them. They can be furnished to new members who want them.

The other announcement is, there have been placed upon the desk some specimen pages of an Analytical Digest, prepared by a member of the Macon bar, who is now a member of the Association. He desires an inspection of the papers by this body. The Analytical

Digest is to extend from Volume LXII to Volume LXXV of Georgia Reports, inclusive. Any gentleman who has not seen these specimen pages is invited to obtain them at the desk.

Mr. W. R. Hammond: I move that the Association adjourn to 4 o'clock this afternoon.

The motion was carried.

#### AFTERNOON SESSION.

The Association met at 4 o'clock, P.M.

The President: The Association will please come to order. The first business in order, gentlemen, this after-ternoon, is the election of officers for the ensuing year. What is your pleasure?

Mr. W. R. Hammond: Mr. President, I move that a committee of five be appointed by the chair to nominate officers for the ensuing year.

The motion was carried.

The President: I will announce as the committee to nominate officers for the ensuing year, Judge W. R. Hammond, Fleming DuBignon, C. C. Kibbee, Hoke Smith and A. T. MacIntyre, Jr.

Mr. Hammond: I will request the committee to meet in the room on the right here, in Judge Clarke's office.

The committee retired.

The President: The next business in order will be the reading of a paper by the Hon. I. E. Shumate. He will please come to the stand.

(Mr. Shumate read a paper which will be found in the Appendix.)

The President: Gentlemen, the next business is the report of special committees. Are there any special committees ready to report? We will be glad to hear from them.

The Secretary: I think you will observe from the programme that the different special committees are named.

The President: The first special committee on the list is the committee on Legal Ethics, the Hon. Julius Brown, chairman. Is he present? (A pause.)

Mr. Alexander Smith: Mr. President, I am a member of that committee, and a few days since received a letter from Mr. Brown. I myself being out of the city, it was forwarded to me. He stated that, by reason of his absence from the city, he would not be able to attend to his duties as chairman. I believe there is no other member present. As for myself, I did not have the time, nor did I think I had authority to attend to it alone. I think that this Association should express itself, and I would suggest, therefore, that it be referred to a new committee or to the same committee, as the Association may decide. I move that the matter be referred to a special committee.

The President: If I am not mistaken, the By-laws provide for a committee on that subject. As I possibly may be mistaken about it, and as your motion will not conflict at all, perhaps it will be better to take action upon it. It will simply be a re-enactment of what has already been done, if I am correct in my recollection. It is moved and seconded that a special committee be appointed, to report at the next meeting, on the subject of Legal Ethics. I believe we have had a committee every year, since the organization of the As-

sociation, on that subject, but the committee has failed to report. The motion, therefore, is to continue that committee by appointing another committee on the subject of legal ethics.

The motion was carried.

Mr. Alexander Smith: I move the committee be appointed in the usual way, by the chair. I suppose the chair can take its own time to appoint the committee.

The President: Gentlemen, the next special committee on the list is the Committee on Legislation recommended by the Association. Judge W. R. Hammond is the chairman. I believe he is engaged on the committee appointed a few minutes ago to report the names of officers for the ensuing year, and I will pass from that committee to the next one, on the subject of Prize Essay. Is that committee ready to report?

Mr. Dessau: Mr. President, two prize essays were submitted to the committee by the Secretary, in accordance with the By-laws of the Association. These essays have received due consideration at the hands of the committee, but the committee, following the rule laid down by the By-laws, has determined not to award the prizes. At a meeting of the Association held in 1885, it was determined that, unless there were as many as three competing essays, no prize should be awarded. In view of that regulation, therefore, the committee feels that it is its duty not to award a prize. It is fair, however, to say, and just, that each of these essays is a very meritorious production.

The subject selected by the Executive Committee is this: "Should the law regarding improvements in ejectment cases be modified; if so, how?" The committee regrets very much, indeed, that they have not the privilege, under the Constitution and By-laws, of awarding prizes to both of these writers. The matter, in behalf of the committee, I refer to the Association now, in order that the Association may, if it should see proper, determine, in view of the great merit of these essays, whether or not a prize shall be awarded.

The Secretary: Mr. President, I know of at least one gentleman who intended to compete for that prize, but said he was prevented by the lateness of the announcement made by the Executive Committee. The announcement, I think, was not made until March. He, therefore, at least, would be a competitor if the same subject were continued another year; and in order that

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these gentlemen who have done this labor may not lose the opportunity they may have of receiving the prize, I move that the same subject be continued until next year, and that further competition be invited.

Mr. Dessau: That would require, sir, a suspension of the rules, because it occurs to me that under the Constitution and By-laws this subject having been named, it has become functus, and unless the rules were suspended in order that that resolution may be adopted, I am afraid that would be violating the Constitution and By-laws, which provide that the Executive Committee shall select a subject or thesis for a prize essay. I presume that when that has once been submitted, and essays have once been prepared on it, that is the end of the business.

The Secretary: It is not a matter of By-laws, it is a matter of resolution.

Mr. Dessau: Yes, it is a matter of resolution, but it did become a part of the By-laws. I want a copy of the Proceedings of 1885. [The Secretary hands Mr. Dessau Proceedings of 1885.] Now, here is the rule, sir. I think you would call this a standing rule:

"Resolved 1. That the Executive Committee at each meeting name a subject on which all essays for the prize offered by the Association for the best essay shall be written, the subject to be published, as the committee may choose.

"2. No prize shall be awarded unless there are at least as many as three competing essays."

The resolution was adopted. I presume it would be fair to say that is a standing rule of the Association, and it ought not to be departed from without good cause; and so far as my Brother Hill's suggestion goes, if it were to be discussed, I myself would be in favor of it, because I very much dislike to see these two very valuable papers lost. I think that when the new Executive Committee is appointed, that they would be very willing, upon suggestion from the Association, to continue the same subject, or re-appoint the same subject. However, the matter is open.

The President: Inasmuch as the Executive Committee is at all times subject to the orders of the Association, a resolution, such as Mr. Hill proposes, instructing that committee to continue this subject to the next meeting, would be in order. It is true that, in the absence of any action on the part of this body, the Executive Committee would conform to the resolution just read, but it appears to me that it is competent for the Association to instruct that committee to continue this subject, and upon such terms and conditions. Therefore, the chair holds that the motion is in order.

Judge Bigham: Mr. President, I for one will be very glad to see these two contesting essays passed upon now. This is a standing rule, I understand, but it may be done away with by a majority vote of the Association, and I would move, sir, that we authorize the committee to award the prize between these two contesting parties. Here is the by-law, or the provision of the Constitution and By-laws, that I would refer to, on page 9:

"These By laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present."

Here we are in a meeting. Two gentlemen have, in good faith, contested for these prizes, and for the lack of a third contestant appearing at this time, we do not award the prize. It seems to me that there is a sort of obligation upon us, when young gentlemen undertake to investigate a question like this, and bring us the result of their labor, that there is a corresponding obligation upon us to give them our opinion upon the subject and award a prize. This is a sort of providential interference, as I understand from brother Hill. Another contestant expected to have his thesis here, but he has failed to do so up to the present time. I, therefore, make that motion.

Mr. King: I second it. I desire, Mr. President, to say that I am wholly impartial. I know none of the parties who have submitted an essay, or who expect to

submit one; but it seems to me that it is only fair to those who, after invitation of the Executive Committee, did get up their essays and submit them. I should think that the other parties had the same opportunities to prepare their essays as those who did prepare them. I think that would be a fair disposition of the matter.

The President: I understand Judge Bigham's motion to be a substitute for that offered by Mr. Hill. Mr. Hill's motion was to instruct the Executive Committee to continue this subject for another year, and that other essays be invited, and to submit the result of their labors and investigations on the subject, and a committee be appointed for the next year to award the prize to whichever essay is entitled to it; and Judge Bigham now proposes to substitute for that, that the Association award the prize, as I understand it, or divide it—

Judge Bigham: That the committee award the prize between the parties at this time.

The President: That the committee do it?

Mr. Bigham: Yes, sir.

The President: Is it your motion that the prize be divided between the two?

Mr. Bigham: No, sir; my motion was to authorize them to judge between the two, as though three had competed for the prize.

Mr. Dessau: Mr. President, before that motion is passed upon, I think it would be very unfortunate to depart from the rule unless some better reason was suggested than the one by Judge Bigham. The adoption of the present rule grew out of the fact that there were only two essays submitted in 1885. The committee reported that the two essays were of equal merit, and therefore the prize was divided. Thereupon the Association adopted a rule that, because there were only two, they would hereafter require three, and we are simply

retracing our steps back to the position we occupied prior to the adoption of the present rule. The young gentlemen who undertook to furnish these essays to the Association were very well aware of what the rule was, and they knew that, unless there were competing essays, they would not be entitled to receive a prize, and, I presume, do not expect to receive a prize. For those reasons, sir, I think that it would be injudicious to depart from the rule. The Association would be setting an example by which they would exhibit the fact that they were not inclined to follow the very rule they had made to avoid a dilemma similar to the present one, and I hope the substitute will not prevail.

The President: The chair will state the proposition again: Mr. Hill offered a motion that the subject which has been selected for competing essays at this meeting should be continued until the next meeting, and that the Executive Committee should invite other persons to submit essays upon that subject, and that, when all the essays were in, including those that have already been submitted, the committee should then award the prize to the most meritorious essay. That would carry the matter over to the next meeting. Judge Bigham offers a substitute to that motion, that the Association instruct the present committee to award the prize to whichever of the two essays they regard as the more meritorious one upon that subject. The Association will first vote upon the substitute to instruct the committee to give a prize to whichever of the two essayists they regard as the more meritorious.

The substitute was lost.

Mr. Dessau: Now, Mr. President, I would suggest, as an amendment to brother Hill's motion, that these gentlemen who have presented these essays shall be at liberty to withdraw them, if they so desire, and present them at some future time within the limit which may be prescribed by the committee. I offer that simply as an amendment.

Mr. Hill: I accept it.

The President: Mr. Hill accepts that as a part of the motion.

Mr. Alexander Smith; Mr. President, I move as a substitute for Mr Hill's motion, with the amendment which he has accepted that the committee which now has these essays in hand be relieved from a report until the next meeting of the Association. In the meantime, that the time for competition for the prize be extended until that time, and the essays for next year be entirely upon a new subject, and take the regular course. It seems to me to be unwise to confine the discussion of the Association, in its extent limited, and limited in its scope, and that it would be better to allow the essay next year to be written upon an entirely new subject; but these young gentlemen who have written on this subject are entitled to some compensation, and that the time for competition on this subject be extended to another year.

The President: You offer that as a substitute to Mr. Hill s motion?

Mr. Alexander Smith: Yes, sir.

The President: As I understand the substitute, it contemplates offering a prize for the new subject, and also continuing this subject.

Mr. Alexander Smith: It does not affect the regular course of the prize essay, because it relates only to the present subject and the present essay, and simply extends the time, by reason of the fact that the Executive Committee failed to announce the subject in time. It does not affect the regular course of the proceedings.

The President: It is proper for the chair to state that the adoption of this motion will not necessarily affect the general rule which requires the Executive Committee to select a subject upon which prize essays shall be written. The object of Mr. Hill's motion is to

dispose of the essays that are now before the Association, and the substitute offered may not affect it. It does not affect the general rule which authorizes that committee to submit a new subject for the prize essay unless the Association withdraws that power from them. The Association, however, has heard the substitute which is offered. It is, in effect, that the time for competing on the subject which has already been submitted be extended, and that the committee also submit a new subject for a prize essay, to be written and acted upon at the next meeting of the Association. If there are no further remarks on the subject, the chair will put the motion.

The substitute was put and lost.

The President: The question again recurs on the motion or Mr. Hill to continue this subject until the next meeting. In the meantime, the committee invites other competitors, other essays to be considered in connection with these which have already been submitted, and Mr. Dessau's amendment—please state that again.

Mr. Dessau: That the gentlemen who have tendered these essays be allowed to withdraw them, and return them again in the time prescribed by the committee.

The President: The amendment is that this subject be continued until next meeting; the committee invites new essays for the prize, and those who have submitted essays may withdraw and revise their essays, and submit them again.

The motion as amended was put and carried.

Mr. W. R. Hammond: Mr. President, the committee to nominate officers are now ready to report. The committee make the following nominations:

President-Walter B. Hill, Macon.

First Vice-President—George A. Mercer, Savannah. Second Vice-President—Pope Barrow, Athens.

Third Vice-President—I. E. Shumate, Dalton. Fourth Vice-President—B. P. Hollis, Americus. Fifth Vice-President—E. N. Broyles, Atlanta. Secretary—J. H. Lumpkin, Atlanta. Treasurer—Samuel Barnett. Ir., Atlanta.

Executive Committee—A. O. Bacon, Macon, chairman; John S. Davidson, Augusta; Henry Jackson and George Hillyer, Atlanta.

Mr. Barnett: Mr. President, I suggest that some other name be suggested in the place of mine, sir. I do not want to get such a firm hold on the position that I never can get out of it. I suggest that some other name might be put in there.

Mr. Hoke Smith: The committee has presented its report and been discharged, and we cannot suggest anybody else. We insist on his serving one year longer. Next year he can renew his suggestion.

The President: I believe under the Constitution the election of officers has to be made by ballot.

Mr. Dessau: Mr. President, I move that Judge Hammond be requested to cast the ballot of the Association for the nominations just made.

Mr. W. R. Hammond: I do not know how legally to

Mr. DuBignon: Judge Hammond was on the committee that made the nomination. I move that Mr. Dessau be requested, in behalf of the Association, to cast the ballot.

Mr. Hillyer: Mr. President, before the officers are chosen, I desire to moot the question of whether the Secretary and Treasurer ought not to be compensated. I regret that Mr. Barnett happened to make a remark about retiring from office before I made the suggestion; but he had no idea I had such a thought in my mind. This morning, in consultation with certain gentlemen

it was determined that there ought to be provision for compensating the Secretary and Treasurer. They ought to be compensated for the labor they do and their responsibility. I suppose there is some provision in the By-laws relative to fixing the compensation. If, however, as suggested by Col. Mynatt, on my right, the subject would be in order at another time, perhaps I had better wait a little. I do not remember that this subject has ever been mooted or discussed, or what the mind of the Association on this subject is. There may be a fixed opinion on the part of the body, but it occurs to me that there ought to be compensation for those officers, and if I am in order, I would like to have it fixed before they are elected. I move that the rule be suspended, in order that the body entertain a motion with a view to compensation of those two officers, and that the matter of compensation of those two officers be referred to the Executive Committee with power to act.

Mr. DuBignon: We had better proceed in a regular order, and elect our officers, and then we can entertain that motion.

Mr. Hillyer: Mr. President, is there any difficulty in our Constitution or By-laws relative to fixing the compensation after officers are elected?

The President: I know of none.

Mr. Hillyer: Then, I will let the motion lie on the table until the report of the committee is disposed of.

The President: The question, then, recurs on the motion of Mr DuBignon to authorize Mr. Dessau to cast the ballot of the Association in behalf of the nominations made by the committee.

The motion was carried.

The President: Mr. Dessau will please comply with the request of the Association.

Mr. Dessau: Mr. President, I cast the vote of the Association for the following gentlemen:

For President-Walter B. Hill, of Macon.

For First Vice-President—George A. Mercer, of Savannah.

For Second Vice-President—Pope Barrow, of Athens.

For Third Vice-President—I. E. Shumate, of Dalton.

For Fourth Vice-President—B. P. Hollis, of Americus.

For Fifth Vice-President-E. N. Broyles, of Atlanta.

For Secretary—J. H. Lumpkin, of Atlanta.

For Treasurer—Samuel Barnett, Jr., of Atlanta.

For the Executive Committee—A. O. Bacon, chairman, Macon; John S. Davidson, Augusta; Henry Jackson, George Hillyer, Atlanta.

The President: Unless objection is made, that will be regarded as a compliance with the rule, so that those gentlemen are duly elected to the respective offices for which they have been nominated for the ensuing year.

Mr. W. R. Hammond: Mr. President, I suppose that while our committee was out, the report of the special committee, of which I was chairman, was called for and postponed. Shall I read it now, or wait until morning? It is getting late.

Mr. Bacon: We are to assemble again to-night, I believe, at 8 o'clock, is is not?

The President: Yes, that is the hour.

Mr. Bacon: It is now getting late; we will have ample time to-morrow, and, unless the Association should think otherwise, I would suggest that it might be well for us to adjourn at this time.

Mr. Hillyer: Mr. President, this other matter, about which there does not seem to be any difference of opinion, can be disposed of by a simple vote, and, as recess will occur, instead of moving that the subject be referred to a committee with power to act, I move that the Exec-

utive Committee be instructed to inquire and report upon the propriety of compensating the Secretary and Treasurer, together with an amount, a proper amount, such as they might find to be advisable, and that they report to-morrow.

The President: The Secretary and Treasurer are both members of the Executive Committee, are they not?

Mr. Dessau: Yes, sir; they are, ex-officio.

Mr. Hillyer: They are not a majority of the committee, and they will be excused, of course, while they are acting with it. Perhaps, as a matter of delicacy, the matter had better be referred to a special committee of five, to be named by the chair, and report to-morrow morning on this subject.

Mr. Dessau: I would like to amend Judge Hillyer's motion, by giving this committee power to determine whether or not they will pay the Secretary and Treasurer for past services.

Mr. Hillyer: I accept the amendment.

Mr. Dessau: If there were ever two officers that ever did belong to an institution that are entitled to compensation, they certainly are represented in the persons who have served us heretofore.

Mr. Hillyer: In accepting the amendment offered by Mr. Dessau, it is proper for me to say that the very efficient labor of the former Secretary was in my mind.

Mr. Hillyer's motion, as amended, was carried.

The President: The chair appoints Judge Hillyer, Col. Mynatt, Mr. Dessau, Col. Shumate and Judge Bigham on that committee.

Mr. Bacon: Mr. President, if there is no other matter pressing, I move that we adjourn, and before doing so, I understand that there is some little difference of opinion or understanding as to the time of meeting tonight. I have been informed that there was a notice read out, for instance, in one of the houses of the Legislature, in effect that the address would be at 9 o'clock tonight. And on the other hand, I understand that the Association has fixed the time to be 8 o'clock. Possibly it might be well to have it announced, and after that I shall move an adjournment.

The President: The announcement was made this morning by Mr. Dessau, on behalf of the Executive Committee, that the meeting to-night commenced at 8 o'clock. I do not know who informed the House of Representatives of a different hour.

Mr. Dessau: Mr. President, Mr. Hill wrote the notices that were sent to the General Assembly. He can state whether he said 8 or 9 o'clock.

Mr. Hill: If the hour was mentioned, it was 8. It was just a general invitation to be present at the meeting.

The President: Is there any action proposed on the subject?

Mr. Bacon: With that statement, I would simply move an adjournment until that hour,

Adjourned.

#### EVENING SESSION.

The President introduced the Hon. Thomas M. Cooley, the orator of the occasion, as follows:

"Gentlemen of the Georgia Bar Association, Ladies and Fellow-citizens: The distinguished gentleman who honors us with his presence on this occasion is so well known to the bar and to the intelligent public, that he needs no introduction at my hands. He is well known, not only on account of the high position which he now honors and adorns, but on account of the well known contributions which he has made to the literature of the legal profession. I am sure it affords you gratification, as well as it does the Association whose invitation he has honored, to find him present on this occasion; and without detaining you from the enjoyment of the intellectual treat which I know is in store for you, I now present to you the Hon. Thomas M. Cooley, who will address you on the subject of "The Uncertainty of the Law." (Loud applause.)

Judge Cooley addressed the Association. (See Appendix.)

Mr. Bacon: Mr. President, before we adjourn tonight, I desire to move that the Association tender to our distinguished guest our very earnest thanks for the able, thoughtful and interesting address by which we have been both entertained and instructed to-night; and further, to request that a copy of it be furnished to this Association, that it may be published among their permanent records.

The motion was carried.

The President: If there is no further business to be presented, the Association will stand adjourned until 10 o'clock to-morrow morning.

# SECOND DAY'S PROCEEDINGS.

#### MORNING SESSION.

Thursday, August 4, 1887.

The President: The Association will please come to order. On yesterday a resolution was adopted directing the chair to designate five members of the Association to co-operate with the regular committee in presenting to the General Assembly, or rather to the Judiciary Committee, the action of the Association with reference to legal education; and the chair announces as the five gentlemen appointed to co-operate with that committee, Messrs. A. M. Foute, Hoke Smith, R. L. Berner, Geo. Hillyer and P. L. Mynatt. These gentlemen will please see the regular committee, and co-operate with them in presenting the action of the Association to the Legislature in reference to legal education. In consequence of the absence of any representative of one of the standing committees on yesterday, that matter was passed The Committee on Jurisprudence and Law Reform, I believe, was the committee of which Mr. Fleming is the representative now. If he is ready with his report, it is now in order.

Mr. Hillyer: Mr. President, as a matter of privilege, before the regular order is entered upon, in the report of the Committee on Organization I was named as a member of the Executive Committee. It will be wholly impracticable for me to undertake the duties of that committee, and I am under the necessity of declining the service. I believe that the rules provide that the President supplies the vacancy. I mention it so that the Association may know that a vacancy exists, that it may appear on the record.

The President: I suppose that the new President will make the appointment.

The Secretary: Mr. President, will you allow me, at this time, for the Executive Committee, to report that that committee has elected several new members. The names are: Harper Hamilton, Rome; Leonard Phinizy, Augusta; Charles W. Seidell, Atlanta. All of them are properly vouched for by members of the Association.

Mr. Fleming: Mr. President and Gentlemen, Major Black, of Augusta, is chairman of this committee, and he requested me to give his regrets to the Association that he was unavoidably detained at home. He asked

me, in his name, to present this report.

I wish to call attention to the way in which this report is signed. Major Black and myself have signed it individually. Mr. Erwin, Mr. Thomas and Mr. Davidson signed it by authority. The manuscript report was sent to them, and they passed upon it, but they did not sign their names to the manuscript, but wrote a letter of endorsement, saying that they approved of the report. That, I think, was an unnecessary precaution on the part of the chairman, but he wished to be scrupulous in the matter. The report, as presented, does embody the unanimous opinion of the committee.

(The report is printed in the Appendix.)

I would state, Mr. President, to the members, if you will look at the bottom of page 4, we should have said "City Court," to make the enumeration complete. We, perhaps, had better put in "or City Court." You will please insert that, and consider it a part of the paper. It would, perhaps, be better to strike at the enumeration altogether. If the enumeration is to remain, we had better put "City Court" in it.

The President: Gentlemen, the next business in order is reading of an essay by Col. R. S. Lanier, on "Usury

as Affecting the Title to Security." The report which has just been read can be called up at any time after the regular order has been gone through with.

(Mr. Lanier read an essay, which is printed in the Appendix.)

The President: I am requested by the Secretary to ask the gentlemen who have already submitted essays, as well as any who are hereafter to read essays to the Association, to furnish them to the Secretary as early as practicable, that they may be put in shape for being printed and embodied in our Proceedings.

Mr. Palmer: Mr. President, if I am in order, I would like to submit a motion. This Association has just been most delightfully entertained by a most able paper on a most practicable subject, and one which the Legislature is now considering. If the bill now before the House should become a law, it is more sweeping in its enactment than anything that is now upon our statute books. I move, if it meets the approbation of this Association, that at once 300 copies of this able address, or paper, be printed and laid on the table of the members of the House.

Mr. Hillyer: I second the motion, and in doing so, I think it would not be amiss for me to state that I had the honor to deliver the opinion of the Supreme Court in the Bullard case, which is the one overruled in a later case, and which has been discussed by our brother; and inasmuch as no opinion was delivered accompanying the head-notes, the profession have not been furnished with the reasons actuating the court, as they were understood at the time the judgment was delivered in the Bullard case. Judges Crawford and Speer were members of the Supreme Court Bench, who presided in that case together with the Circuit Judge detailed or called by the Governor to perform that duty, Chief Justice Jackson being disqualified; and my recollection is, that the reasons upon which the three

Judges acting in the case grounded the judgment were these, briefly stated: That a debtor is in possession of the money that was the proceeds of a transaction, and that it is against conscience for a man to keep the money when he has paid no consideration for it; and that, therefore, as a matter of equity, resting on the conscience of the party, the principle is grounded upon the very mud-sill of equity jurisprudence, that a court of chancery has the right to seize upon the conscience of a party, and say he shall not be heard to set up the defense of the illegality of a debt until he disgorges and pays back the money. I boldly affirm that there are parallel instances of exercise of jurisprudence or authority by courts of chancery in England and America that rest upon that ground—precisely upon that ground. For my own part, I remember that I felt, in considering the matter, fortified in the opinion rendered, by the wellconsidered views of that eminent lawyer, once my partner in the law, to whose teachings I have been largely indebted in very many particulars, Mr. Hope Hull, who entertained precisely a similar view.

Now, if you will read the Broach case (I believe in the 75th Georgia), where this decision in the Bullard case is overruled, the Supreme Court says it is not meant to decide that if a debtor himself first invokes equity, this principle shall be applied, that he shall give back the money before he is heard. But the court in the Bullard case were of the opinion that the matter involved the conscience of the party, no matter who first mentioned the subject; and we felt that, as a matter of conscience and right, it is just as wrong for a debtor to keep the money without having paid any consideration for it, if his adversary first mentions it, as if he first mentioned it. Those were the reasons upon which the decision was grounded, and according to the practice in that day, head-notes were read by the entire court, and were approved by the entire court. I cannot undertake to say, as a matter of memory, that they were submitted to and approved by Judges Crawford and Speer, but I am confident that they were.

Of course, in making these remarks, I do not mean to question the authority or wisdom of the present decision; but I submit the statement as a historical view of the matter, in order that the profession may be in possession of features in connection with it not before made public. I second the motion of Mr. Palmer.

A vote viva voce was taken upon Mr. Palmer's motion. The President stated that he was in doubt, and asked members in favor of the motion to rise and stand until counted. Before this was done, however, the following occurred:

Mr. Smith: Mr. President, there are several of us here who want our reasons for saying "no" understood. We favor most of what is contained in what is known as the Northcutt bill.\* We favor legislation which will prevent usurious contracts, and if the action of this body is to indicate to the Legislature that we approve legislation which will sustain securities given for usurious contracts, we do not desire to be committed to such a proposition. My own view is that every usurious contract should be declared void. If I were in the Legislature, I would vote for a bill that not only rendered a deed, but a mortgage, void which secured a usurious contract. even vote for a bill which prevented the collection of a usurious note. I certainly would be willing to vote for a bill which did not allow commissions to agents above the eight per cent.—a bill which would render such a transaction usurious, and vitiate the security given for such paper. For these reasons alone I have voted against the publication.

Mr. Akin: Mr. President, without detracting for one moment from the exhaustive ability of the paper which has just been read by the learned gentleman, I think we should go slow about such a proposition as this. If this

A bill pending before the Legislature.

Bar Association is to have any efficiency, its chief efficiency will be in educating public sentiment. But if, at the same time, we take such an active step, such a decided stand as this, it looks towards enforcing our views upon the Legislature. I am afraid the Legislature might receive such a thing as this as an interference with their peculiar duties and prerogatives, and it might impair our influence with them.

Mr. Palmer: Mr. President, as I made the motion, I simply wish to make one statement. I do not understand that the paper that has been read goes to such an extent as would prevent us from simply laying the matter before the Legislature. As I understand it, it is simply saying to the Legislature, "Will you consider it?" It is not saying to the Legislature that this Bar Association, as an Association, asks anything to be done, but simply that a paper on a subject which is a vital subject be laid before them, to be considered in connection with proposed legislation. That is all I understand it means. Certainly it is a paper, it seems to me, that ought to be read by the Legislature. I do not understand that it commits the Association to anything at all, but simply that they have it to consider.

Mr. Hammond: Mr. President, I agree with my friend, Mr. Akin, that the moral effect of this paper would be better if we did not take this action, and have it published and put on the desks of members of the House. I think, to let them get it without any action on the part of the Bar Association, will have much better effect than for the Bar Association to have it published and placed before them; and therefore I voted against that motion.

Mr. Meldrim: How will they get it?

Mr. Hammond: They will get it as people generally get news. It will probably be published in the evening and morning papers.

A voice: Not the whole of it,

Mr. Hammond: A rumor of it will go abroad. They will hear of it in the ordinary way.

Mr. MacIntyre: Mr. President, we will at least create the impression upon the Legislature, if we take this action, that the decision in the 75th Ga. is wrong. think that is right and incontestible. This learned report is a direct attack, not upon the judges, but upon the principles underlying that decision. I do not think we are unanimous in that. I am certain there are a great many members in this Association who think that that decision is right, and if we wanted to send anything at all to the Legislature, we ought to say nothing, only that upon which we are comparatively united. If we send it from the Bar Association, when we meet members of the Legislature, and they ask us about it, and we say we disagree with it, we will destroy our usefulness, not only now, but in the future. Lawyers will disagree as well as doctors, and I do not think we ought to send anything to the Legislature unless we are practically united. I believe the decision in the 75th Ga. is correct in principle.

Another view of it is, the Legislature will think we are criticising the decision of the Supreme Court, and while that report does not do it, it may appear so. They will think we go so far as to criticise the decision of the Supreme Court, and that we believe that nobody knows anything except the Bar Association, and we are boss of the job. I think we ought not to send it there. I think, however, that paper is one of the ablest read for

many days.

Mr. Lanier: Mr. President, so far as my personal views and wishes are concerned, I should much prefer that the motion be withdrawn. I think the whole object of it, so far as there is an object in it, could be subserved by withdrawing it.

Mr. Palmer: Mr. President, just before Col. Lanier took his position on the floor, I was in the act of stating to the Association that I would withdraw it.

The President: The motion is withdrawn. The next regular business is a paper to be read by Mr. H. E. W. Palmer, on the "Evidence Act of 1866."

(Mr. Palmer then read a paper, which is printed in the Appendix.)

The President: I have received from the Hon. W. C. Glenn, chairman of the Sub-committee of the Judiciary, the following notice, which he requests me to read to the Association:

"The Sub-committee of the Judiciary, to whom was referred bills upon procedure, being a Bar Association bill and others, will meet tonight at half past 8 o'clock, in the room of the chairman, Mr. Glenn, of Whitfield, No. 403 Kimball House. Any member of the Bar Association, desiring to lay his views before the committee, is asked to be present."

In a note he says:

"Please read above notice to the Association, and urge such to come as can."

Remember, half past 8 o'clock, to-night, at the room of the Hon. W. C. Glenn, No. 403, at the Kimball House. I hope the committee in charge of bills will bear that notice in mind. The next business will be the report of Judge Hammond, which he started to read yesterday afternoon, but was interrupted by a motion to adjourn.

(Mr. Hammond read a report, which is printed in the Appendix.)

The President: The next business on the list of business lying on the chair's desk is miscellaneous business, Is there anything under that head to be brought forward?

Mr. Dessau: Mr. President, the committee that was appointed by the chair on yesterday to consider the propriety of compensation to the Secretary and Treasurer of the Association, has prepared a report, which the chairman has requested me to present to the body. We

had the matter under consideration, and this report is the result:

Mr. President :

The Special Committee on compensation to the Secretary and to the Treasurer of this Association have had the matters submitted to them under a consideration, and recommend: That when, at any time hereafter, any member of the Association shall hold the office of Secretary or of Treasurer for a longer period than two years, then, after the period of two years, such officer shall receive, as compensation for each year he thereafter serves, the sum of one hundred dollars per annum.

GEORGE HILLYER, Chairman.

The idea which controlled the committee in submitting this report was this: that the offices which this Association distributes are, in themselves, positions of honor, that each member of this Association owes something to the Association which he should feel disposed to pay in the form of such duties as the Association may call upon him to discharge; but that, after he has performed his due share of those duties, which the committee thought would be comprised within the limit of two years' service, then, and in that event, he certainly would be entitled to some compensation.

A motion was made and seconded that the report be adopted. A vote viva voce was taken, and the chair announced that he was in doubt, and that he would take a standing vote upon it.

The Secretary: Mr. President, before you put the question, it occurs to me that the importance of the matter deserves that it should be discussed. I do not mean by that to intimate that the committee have not very carefully deliberated on the subject; but the importance of the question, I think, deserves some more careful consideration by the Association than we are able to give in a moment between the presentation of the report and action upon it. I, myself, am not clear in my own views about it, although I voted against the adoption of the report. We are well aware that this Association is,

financially, flourishing. Mr. Barnett reported on yesterday morning a balance in the treasury of over \$800. That was exclusive of the receipts of this meeting, which, undoubtedly, will put in the treasury more than \$1,000. Considering the itching palms that lawyers have when they find a fund in court, it seems to me to be strange we cannot find some way to spend this surplus. I know of no better way of using a part of it than in paying a reasonable salary to the officers who discharge these duties, which are matters of detail. Of course, the salary ought not to be high enough to be any inducement to seek the office, and the committee certainly have put it at a very reasonable figure; but it ought to be high enough to pay for the loss of time, and trouble which the discharge of these duties require; and, referring to the example of the Association of Alabama. I find from their reports that they pay the gentleman, who has both offices combined, a salary of \$200 a year. The committee has fixed it about on that basis. Is it not reasonable, from this time on, to begin the payment of their salaries? I am without interest in this question now, of course, because I realize that the brethren have paid me for my work in coin that is far richer than gold. They have bestowed on me a valuable compliment by putting me in the chair of this body. It is a pleasure to me to realize from this action of the Association that they have realized thoughtfully, considerately and sympathetically, that the office of Secretary requires the employment of a good deal of time and trouble; and if that has been recognized,— I think there is manifest proof in the action to which I have referred that the Association does realize that fact why should we require of any member the performance of gratuitous service for two years? It is true every man owes a duty to his profession, and every member owes a duty to this Association, but, out of the 300 members, we must remember that there are very few who will be called upon to discharge these onerous duties; therefore, it occurs to me it would be proper to accept the salaries which the committee has fixed, and to amend their report by providing for their payment from date. To bring the matter before the body for discussion, I will move that the report be adopted, with the amendment that the salaries be paid from this date.

Mr. Fleming: I second the amendment.

The President: I believe there was a motion pending—yes, I know there was a motion pending to adopt this report, and a vote has been taken on it. The chair was in doubt as to the result; so it will only be by common consent that an amendment can be entertained at this time.

Mr. Dessau: Mr. President, as representing the chairman of that committee, who is absent, I would state that I do not desire that the report shall be protected by any technicality; and I therefore ask that Mr. Hill's amendment be considered, in order that the sense of the Association might be taken.

The President: If there is no objection, the chair will entertain the amendment; it will save time to go back. There being no objection, I will put the amendment to the Association. It is moved to amend this report by making it operative from this time forth, instead of making it conditional upon the fact that the Secretary or Treasurer has served two years, and to make the standing salary of the Secretary and Treasurer \$100 each. That is the effect of the amendment.

Upon a vote, the report was amended, and as amended adopted.

The President: The next business in order is the election of delegates to the American Bar Association, which meets at Saratoga some time during this month, I believe. How many delegates are we entitled to?

The Secretary: Two, sir.

The President: We might appoint two delegates and two alternates.

The Secretary: Mr. President, I hope you will make the inquiry whether any gentleman present expects to attend. I know there are some here who will attend, and we want to elect as delegates those who will attend.

Messrs. Fleming DuBignon, P. L. Mynatt, P. W. Meldrim and Hoke Smith were put in nomination.

Mr. Meldrim: I do not know what the number is; there is no rule recognized by the American Bar Association as to delegates. (He also suggested the withdrawal of his name, as he was already a member of the American Bar Association.)

The President: The chair would suggest that the four gentlemen all be nominated and elected as delegates, and the American Bar Association can seat them or not, as they see proper. (Laughter.)

Mr. Meldrim: The fact is, they will all become members of the American Bar Association when they get there; there is no difference between the two.

The Secretary: They have the advantage of getting specially introduced to the Bar Association.

Mr. Meldrim: That is more than I received.

Mr. Hammond: I move that all four of those gentlemen be nominated. I nominate all four of those genthemen as delegates of this body.

The motion was carried.

The President: The business is exhausted, and the hour of adjournment has arrived, and unless some other business be brought before the body, a motion to adjourn will be in order.

Mr. Hammond: I move that the body now adjourn until 4 o'clock.

Adjourned.

#### AFTERNOON SESSION.

A heavy rain prevented the meeting of members before 4.30 o'clock. President Anderson being absent, by request Mr. W. R. Hammond took the chair as President pro tem.

The President pro tem: Gentlemen, in the absence of the President, I have been requested to take the chair. The Association will please come to order. The regular order is the action upon reports received. There are some reports before the Association that ought to be acted upon. Is there any number necessary to constitute a quorum?

The Secretary: There is not, so far as I know. I presume that this body has met in pursuance of a regular adjournment, and all who meet in a regular proceeding constitute a lawful body.

The President pro tem: The Constitution says, "those present shall constitute a quorum." Gentlemen, there are several reports of committees that ought to be acted upon, and that is the regular order of business—acting upon reports of committees. There is an important report on Jurisprudence and Law Reform, read this morning by Mr. Fleming.

The Secretary: There is a very valuable report offered by that committee, relating to a number of subjects. In the absence of so many members, perhaps it would not be desirable to discuss all these recommendations in detail. I have this resolution to offer, which will bring the subject up—that the committee who prepared this report be requested to furnish copies of it to the general Judiciary Committee of the House and Senate, to the members of both committees, simply for their information, with the hope that they will take up and pass such of these measures as commend themselves to their judgment. I talked with Mr. Fleming, one of the committee, and the gentleman who prepared the report.

He does not himself desire that these bills should be, prepared by this committee, or submitted by this committee. He himself made the suggestion which I have embodied in this resolution, that this report be placed in possession of the Judiciary Committee of the House and Senate. I would add to that motion that the report be adopted and placed in possession of the Judiciary Committee of the House and Senate.

Mr. Fleming: Mr. President, in conversation with Mr. Hill, a moment ago, upon that subject, I suggested to him that, in view of the small attendance here this evening, that that, probably, would be the best disposition to make of the report. The committee, I know, would be very much gratified if we could have a thorough and complete discussion of all the points involved in the report; but I see, from circumstances, we will not have that full discussion. Of course, if there is any gentleman present who has definite views to express upon it this evening, we will be very glad to have those views presented; but my object was not to force the Association into any indorsement of the report, beyond the extent to which they have been able to investigate it; and, for that reason I suggested to Mr. Hill that, instead of drafting those bills and introducing them through some member of the Legislature, the better course would be to refer the whole matter, the entire report, to the Judiciary Committee, and say to them, that this is a report the Georgia Bar Association has had before it, and we ask you to take charge of it, investigate it, and present to the House and Senate such portions or the whole of it. as may meet with their approval. I have heard incidentally, that probably the Legislature would not take very kindly to too many bills that emanate very directly from the Georgia Bar Association, or from lawyers as a class, and I think the best course would be to lay it, as a courtesy, before the committee, and ask them, if they think there is anything in the report which would benefit the courts of the State, to take it up and present it themselves.

Mr. Blalock: I second the motion.

The motion was carried.

The Secretary: Mr. President, I offer this resolution:

"Resolved, That the communication of the committee of the Alabama Bar Association, respecting a codification of the law of negotiable instruments, be referred to the Committee on Jurisprudence and Law Reform."

Gentlemen present may remember that the former Proceedings contained a letter from the Committee on Correspondence of the Alabama Bar Association relating to a bill looking towards uniformity in the commercial law of the United States, and I think it would be desirable to have that matter referred.

The resolution was adopted.

The Secretary: I offer this resolution:

"Resolved, That the Georgia Bar Association should be authorized by law to institute proceedings in proper cases to disbar attorneys in accordance with the provisions of the Code.

"Second, that this resolution be referred to the Committee on Admission to the Bar, with a request that they report at the next session."

The resolution was adopted.

Mr. Kibbee: I do not know but that I am too late in making a suggestion, but this morning I could not find the section to which I desire to call the attention of the Association, and that is in relation to the registry law, Section 3:

SECTION 3.—That as against third parties, acting in good faith and without notice, no money judgment obtained in any court of this State, outside of the county of the defendant's residence, shall have a lien upon the property of the defendant in any other county than where obtained, unless the execution issuing thereon shall be entered upon the general execution docket of the county of his residence within twenty days from the time the judgment is rendered. When the execution shall be entered upon the docket after the twenty days, the lien shall date from such entry.

This provides that there shall be no lien upon the property of the defendant until the execution is entered on the docket of the county of his residence within twenty days after the judgment is rendered. In a suit

in the county of the principal, between the institution of the suit and before final judgment is rendered, the security may have removed, and by reason of this act, within twenty days after the rendition of the judgment, that execution must be recorded in the county of the defendant's residence. He may not reside there; he may have removed from there in the interval between the institution of the suit and final judgment, and yet, unless the plaintiff does record this in the county of his residence within twenty days thereafter, his lien is lost

Mr. Fleming: Only against third parties.

Mr. Kibbee: I know the object and effect of it, but if this residence was not known, there would be some difficulty in that case. I remember a case arose where a Mr. Hazlehurst was interested in the purchase of some Mr. McDuffy was security for Mr. Cherry upon a series of notes within Justice Court jurisdiction. Search was made in the county of Mr. McDuffy's residence as to whether or not there were any judgments or mortgages against him; also, in the Circuit Court of the United States, and there were found to be none, and the party advised Mr. Hazlehurst that he could purchase the land. Shortly after he had purchased, however, about \$1,500 of Justice Court ft. fas. were levied on the property, which had been obtained in the county of Bibb. Now, it is to meet that sort of difficulty that I apprehend that this registry law contemplates providing for. But the difficulty is, that unless that execution is registered within twenty days after its rendition in the county where the defendant lives, it loses its lien. Suit may be delayed for vari ous causes; one of the defendants may have removed his residence, and it may be somewhat difficult for the plaintiff in f. fa. to ascertain where his residence is, and if the property has passed in that interval, it is gone.

Mr. Fleming; It would be almost impossible to draft a law to meet every particular case.

Mr. Kibbee: In view of the fact that the recommendation is simply to present this whole matter to the

Legislature, and we take no special action ourselves upon it, it will not work any harm; but that seems to be a defect in the measure itself.

The President pro tem: I understand there is no motion to reconsider that.

Mr. Fleming: No, sir. In that report, for the special Committee on Legislation, you informed us that a portion of the bills which had been drafted had been lost, and suggested that the Association take some action to reproduce those bills. It is very evident there is no other committee of the Association which could be appointed so competent as that committee, and I make a motion that that committee be continued, with the request to reproduce the bills if possible, and give them such furtherance and effect as may be in their power.

The President pro tem: That committee is not here. Only two have been here at this session at all. The material that the committee worked upon in the report, as it was published in the previous proceedings, we can very easily get. You hear the motion of Mr. Fleming.

Mr. Fleming: Mr. President, I do not see how any other committee could possibly deal with the subject matter as effectually as the committee which has already drafted the bills, and it was for that reason I made the motion. If there are any vacancies upon the committee any way, or any members of the committee absent in such a way as to interfere with their work, it might be well to supply their places; but it seems to me we had better put it in the hands of the committee who drafted the bills.

Mr. Hoke Smith: It might be well to add two or three additional members of the Association to that committee; men whom we know will be here and be able to look after it, leaving the old committee with two or three additional men, if we can find out who will be here. Who are on the committee now?

Mr. Fleming: Mr. Hammond, Mr. Hill, Mr. Frank Miller—

The President pro tem: I would suggest the appointment of a new committee.

Mr. Hoke Smith: Suppose we take the members of the old committee who can be here, and add additional members to it. Can you tell us who are here of the old committee?

The President pro tem: Mr. Hill and myself are the only members present. Mr. Miller, Mr. Peabody and Judge Reese were the other members.

Mr. Smith: Who had special charge of the preparation of bills?

The President pro tem: The work was divided among the members of the committee by appointment of the chairman. There was a good deal of work to do and the different parts of it were assigned to different members of the committee, and the committee met as a whole, revised that work and prepared the bills.

Mr. Smith: I suggest as the committee Mr. Hammond, Mr. Hill, Mr. Thomson, Mr. Ellis and Mr. Bacon.

Mr. Fleming: I accept the amendment.

The motion, as amended, was carried.

The President pro tem: There are some other reports.

The Secretary: Judge Reese is chairman of a committee. I know very well from his interest in the work of the Association that he has, doubtless, prepared a report of his committee. I observe from the papers that railroad communication is interrupted between this point and Washington, which, I suppose, accounts for his absence. I move that the Association request that, if such a report has been prepared, it be printed in the proceedings of the next meeting for information, so we will have

it in our possession and can act on it at the next meeting. It is the Committee on Remedial Procedure.

The motion was carried.

The President pro tem: I see the President of the Association has arrived, and I will ask him to take the chair.

President Anderson took the chair.

The President: Gentlemen, I understand that no action has been taken yet upon the report submitted this morning by Judge Hammond. What will the Association do with that?

Mr. Fleming: I was under the impression that the report of that special committee was adopted this morning, and the report I made in reference to having that committee to finish its work, covered everything that was left undone, but it seems that no action was taken upon that report. I move now, sir, that the report of that committee be adopted by the Association.

The President: The report, as I recollect, called attention to the fact that some of the bills that have been prepared, have been lost.

Mr. Fleming: Yes, but that has been provided for by a motion made before you came in.

The motion to adopt was carried.

The President: I received a letter on yesterday from Mr. Charles C. Jones, Jr., expressing his regret that he was not able to attend the meeting of the Association on account of sickness in his family. I state that for information of the Association. Is there any other business to be brought before the meeting? If there is any matter passed over I hope that attention will be called to it before we adjourn.

Mr. Fleming: I move we adjourn.

The motion was carried and the Association adjourned.

# CONSTITUTION AND BY-LAWS.

#### ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the Bar of Georgia. This Association shall be known as The Georgia Bar Association.

#### ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of this State in good standing, and who shall also be nominated as hereinafter provided.

#### ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the Committee. Each of these officers shall be elected at each annual meeting for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By Laws.

#### ARTICLE IV.

At the meetings of the Association, all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and, in such case, placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

#### ARTICLE V

Each member shall pay Five Dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

# ARTICLE VI.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

## ARTICLE VII.

The following Committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each:

- 1. On Jurisprudence and Law Reform.
- 2. On Judicial Administration and Remedial Procedure.
- 3. On Legal Education and Admissions to the Bar.
- 4. On Grievances.
- 5. On Memorials.

A majority of the members of any Committee, who may be present at any meeting of such Committee, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

#### ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

#### ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

#### ARTICLE X.

This Constitution may be altered or amended by a vote of threefourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws

#### ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.\*

# BY-LAWS.

I.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

#### H

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.†

#### III.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse, all funds of the Association; he shall report an-

The charter was duly obtained. See First Report, page 16. †As to the compensation of Secretary. See ante, pp. 33, 45.

nually, and oftener if required; he shall keep regular accounts, which shall, at all times, be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office, he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office, so long as he discharges any of the duties thereof.\*

#### IV

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the programme for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same. They shall have no power to make the Association liable for any debts amounting to more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

- 1. Reading minutes of preceding meeting.
- 2. Address of the President.
- 3. Report of Treasurer.
- 4. Report of Executive Committee.
- 5. Elections, if any, to membership.
- 6. Reports of other standing committees.

- 7. Reports of special committees.
- 8. Election of officers and appointment of committees.
- o. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VI

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

#### VII.

In pursuance of Article IX of the Constitution, there shall be the following standing committees:

- 1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such, as in their opinion, may be entitled to the favorable consideration of the Association.
- 2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association, such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge, from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their reports recommend changes in legislation, the Association may appoint, either the same, or other committees to bring such matters properly to the attention of the General Assembly.
- 3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

- 4. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the administration of justice, and to report the same to this Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.
- 5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief and appropriate notices of members who have died during the year preceeding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report.

VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.\*

#### IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint, shall

<sup>\*</sup>As to payment of expenses of committees, see Report for 1885-'86, page 70. As to printing committee reports in advance of the annual meetings, see Report of 1886-'87, page 6.

present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanation, the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of §§420 and 434 of the Code, inclusive.

X

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

#### XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor, but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

#### XII.

All annual dues to this Association shall be paid in advance by each member upon his election, and in advance for each year during membership, and any member failing to pay his annual dues in such manner, shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, unless for good cause shown, the President shall excuse such default, in

which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.\*

## XIII.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

#### XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time, upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer, that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

#### XV.

The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee, the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during any year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

#### XVI

No resolution complimentary to any officer or member shall be entertained.

## XVII.

All addresses, essays and other papers read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting; and, if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

<sup>\*</sup>As to time to which payments between sessions relate, see pages 12, 13 and 14, Report of 1885-'86.

# OFFICERS AND COMMITTEES

#### · PRESIDENT:

# WALTER B. HILL.

#### VICE-PRESIDENTS:

ist. Geo. A. Mercer.

3rd. I. E. SHUMATE.

2nd. Pope Barrow.

4th. B. P. Hollis.

5th. E. N. Broyles.

#### **EXECUTIVE COMMITTEE:**

A. O. Bacon, Henry Jackson, JOHN S. DAVIDSON, W. R. HAMMOND,

AND THE SECRETARY AND TREASURER, ex officio.

Secretary:

Treasurer:

J. H. LUMPKIN.

SAMUEL BARNETT.

# STANDING COMMITTEES FOR 1887-88.

# ON JURISPRUDENCE AND LAW REFORM:

J. C. C. Black, Augusta; F. C. Foster, Madison; A. S. Erwin, Athens; W. H. Fleming, Augusta; George Dudley Thomas, Athens.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE:

William M. Reese, Washington; George Hillyer, Atlanta; Henry Jackson, Atlanta; L. A. Dean, Rome; A. S. Clay, Marietta.

ON LEGAL EDUCATION AND ADMISSION TO THE BAR:

George A. Mercer, Savannah; P.W. Meldrim, Savannah; A. T. Mac-Intyre, Jr., Thomasville; C. C. Kibbee, Hawkinsville; S. G. McLendon, Thomasville.

#### ON GRIEVANCES:

L. F. Garrard, Columbus; T. J. Chappell, Columbus; G. E. Thomas, Jr., Columbus; John W. Park, Greenville; John T. Clarke, Cuthbert.

#### ON MEMORIALS:

F. G. du Bignon, Savannah; J. R. Lamar, Augusta; H. A. Matthews, Fort Valley; C. P. Steed, Macon; James Bishop, Jr., Eastman.

# SPECIAL COMMITTEE.\*

#### ON LEGAL ETHICS:

Washington Dessau, Macon; Julius L. Brown, Atlanta; John Milledge, Atlanta; Alexander W. Smith, Atlanta; J. A. Billups, Madison.

The Committee on Drafting Bills, etc., were continued, with the request that they reproduce certain bills which had been lost, and give them such furtherance and effect as they could. The Committee named consisted of W. R. Hammond, Atlanta; W. B. Hill, Macon; W. S. Thomson, Atlanta; W. D. Ellis, Atlanta; A. O. Bacon, Macon. See ante pp. 52-53.

# **OFFICERS**

OF

# THE GEORGIA BAR ASSOCIATION

# FOR PAST TERMS.

# 1883-1884.

PRESIDENT.
L. N. WHITTLE,
. VICE-PRESIDENTS.
First—CHARLES C. JONES, JR., Augusta Second—HENRY JACKSON, Atlanta Third—M. H. BLANDFORD, Columbus Fourth—POPE BARROW, Athens Fifth—GEORGE A. MERCER, Savannah
Secretary and Treasurer-W. B. HILL, Macon
1884-1885.
PRESIDENT.
W. M. REESE, Washington
VICE-PRESIDENTS.
First—F. H. MILLER, Augusta
Second—L. F. GARRARD, Columbus
Third—W. S. BASINGER, Dahlonega
Fourth—W. M. HAMMOND, Thomasville
Fifth—H. P. BELL,
Secretary—W. B. HILL,
Transpare C DADALETTE T-

# 1885-1886.

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PRESIDENT.
JOSEPH B. CUMMING, Augus
VICE-PRESIDENTS.
First—P. L. MYNATT, Atlar Second—W. A. LITTLE, Columb Third—J. M. PACE, Covingt Fourth—W. H. DABNEY, Ro Fifth—F. G. DuBIGNON, Savanu Secretary—W. B. HILL, Mac Treasurer—S BARNETT, JR., Atlan
1886-1887.
PRESIDENT. CLIFFORD ANDERSON,
VICE-PRESIDENTS.
First—N. J. HAMMOND, Atla Second—W. A. LITTLE, Colum Third—A. S. ERWIN,
Fourth—A. H. HANSELL,
Treasurer—S. BARNETT, Atla

# ROLL OF MEMBERS.

Adams, S. B		Savannah
Akin, J. W		Cartersville
Alexander, J. H.		Atlanta
Anderson, Clifford		. Macon
Anderson, C. L.		Atlanta
Arnold, F. A.		. Macon
Arnold, Reuben		Atlanta
Ashley, D, C.		. Valdosta
Angier, E. A		Atlanta
Bacon, A. O.		. Macon
Barnes, Geo. T.		Augusta
Barnett, Samuel		. Atlanta
Barrow, Pope .		. Athens
Bartlett, C. L.		. Macon
Basinger, W. S.		Dahlonega
Beckwith, J. F. B.		. Savannah
Bell, H. P	. , , , , , , , , , , , , , , , , , , ,	Cumming
Bell, G. L.	· · · · · · · · · · · · · · · · · · ·	. Cumming
Berner, R. L		Forsyth
Best, E. F.	Wash	ington, D. C.
Bigham, B. H.		LaGrange
Billups, J. A		Madison
Bishop, James, Jr.		Eastman
Black, J. C. C.		Augusta
Blandford, M. H.		Columbus
Bleckley, L. E		Atlanta
Boynton, J. S.		. Griffin
Bower, B. B.		Camilla
Brandon, Morris		. Atlanta
Brown, J. L		Atlanta
Broyles, E. N.		. Atlanta
Bryan, Geo. W.		McDonough
Brantley, W. G.		Blackshear
Bush, I. A		Camilla
Butler, E. W.		Madison
Calhoun, Patrick		. Atlanta

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Calhoun, W. L	. Atlanta
Camp, Felix	. Macon
Candler, J. S.	. Atlanta
Carlton, H. H	. Athens
Cameron, H. C	Hamilton
Chappell, T. J.	. Columbus
Chappell, T. J. Cheney, B. B.	Lumber City
Cheney, W. T.	. Rome
Cheney, W. T. Chisholm, W. S.	Savannah
Clarke, M. J	. Atlanta
Clarke, J. T	Cuthbert
Clay, A. S	. Marietta
Cobb, A. J	Athens
Colley, F. H.	Washington
Cobb, A. J. Colley, F. H. Collier, W. E. (deceased See Appendix)	Fort Valley
Colville, Fulton	. Atlanta
Cooledge, A. F.	Atlanta
Cotten, J. A	Thomaston
	Atlanta
	. Augusta
	Brunswick
Cumming, J. B.	Augusta
Cumming, J. B	Savannah
Dabney, W. H.	Rome
Davidson, J. S.,	. Augusta
Davidson, J. S., Davidson, W. T. Davis, B. M.	Augusta
Davis, B. M.	. Macon
Dean, L. A	. Rome
DeGraffenreid, M. (Resigned.)	Atlanta
DeLacy, J. F.	Eastman '
Dell, J. C.	. Sylvania
Denmark, B. A.	~ .
Denmark, E. P. S.	
Dessau, Washington	
Dorsey, R. T.	Atlanta
DuBignon, F. G.	Savannah
*	Washington
** *	Gainesville
Eason, Thomas	. McVille
	Lexington
	Texmiston

Ellis, W. D	Atlanta
Ely, R. N.	~
<b>3</b> .	. Athens
Erwin, L. M.,	. Macon
Erwin, R. G.	
Estes A. B., Ir.	Blackshear
Erwin, R. G., Estes, A. B., Jr. Estes, Claud	Macon
Estes, J. B.	Gainesville
Eve, W. F	Augusta
Falligant, Robert	Savannah
Featherston, C. N	Rome
Fleming, W. H	. Augusta
Foster, F. C	Madison
Foute, A. M	Cartersville
	Augusta
Ganahl, Joseph	Columbus
Gartrell, L. J	Atlanta
Glenn, J. T	Atlanta
Goetchius, H. R	Columbus
Goode, S. W	Atlanta
Goodyear, C. P	Brunswick
Gray, J. R	Atlanta
Green, J. W.	
oren, j. w	Atlants
Grimes. T. W.	Atlanti. Columbus
Grimes, T. W	
Grow, S. E. Guerry, DuPont	Columbus
Grimes. T. W. Grow, S. E. Guerry, DuPont Gustin, Geo. W.	Columbus Carrollton
Grow, S. E	Columbus Carrollton Macon
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased)	Columbus Carrollton Macon . Macon Griffin Macon
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper	Columbus Carrollton Macon Macon Griffin Macon Rome
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth Atlanta
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth Atlanta Atlanta
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R. Hammond, W. M.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth Atlanta Atlanta
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R. Hammond, W. M. Hansell, A. H.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth Atlanta Atlanta
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R. Hammond, W. M. Hansell, A. H. Hardeman, Isaac	Columbus Carrollton Macon Macon Griffin Macon Nome Forsyth Atlanta Atlanta Atlanta Thomasville Thomasville Macon
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R. Hammond, W. M. Hansell, A. H. Hardeman, Isaac Hardeman, R. V.	Columbus Carrollton Macon Macon Griffin Macon Rome Forsyth Atlanta Atlanta Atlanta Thomasville Macon Clinton
Grow, S. E. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hall, Samuel (deceased) Hamilton, Harper Hammond, A. D. Hammond, N. J. Hammond, T. A. Hammond, W. R. Hammond, W. M. Hansell, A. H. Hardeman, Isaac	Columbus Carrollton Macon Macon Griffin Macon Nome Forsyth Atlanta Atlanta Atlanta Thomasville Thomasville Macon

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Hill, B. H.,	•	•		•	•		. Atlar
Hill, J. W.	•	•	•			•	. Greenvi
Hill, W. B.	•.	•		•	•		. Mac
Hillyer, George	•	•	•	•			. Atlaı
Hitch, S. W		•		• '	•		. Blacksh
Holton, G. J.	•	•				•	. Bax
Hood, Arthur .				•	•		. Cutht
Hopkins, J. L.							. Atla
Howell, G. A.							. Atla
Hudson, C. B.	•						. Ameri
Hutchins, N. L.							Lawrencev
Jackson, Henry							. Atla
Jackson, W. E.				•	٠.		. Augi
Jenkins, W. F.							. Eaton
Johnson, W. G.							. Lexing
Johnson, Richard	_			_			. Clin
Johnson, R. H.	_	٠.	-				. Atla
Jones, A. R.	. •			٠.	•		Thomas
Jones, C. C., Jr.	•	•	•			•	. Aug
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Jordan, G. W	•	•	•	•		•	. Hawkins
Kay, W. E.	•	•		•	•		Brunsv
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Kibbee, C. C.	•	•		•	•		. Hawkins Cuth
Kiddoo, W. D.	•	•	•	•		•	. Cuth
King, A. C.	•	•		•	•		
King, Porter	•	•	•	•		•	. Atl
Kingsberry, S. T.	•	•		•	•		. Quit
Lamar, J. R.		•	•	•		•	. Aug
Lanier, R. S	•	•		•	•		. M:
Latham, T. W.			•	•		•	. Fair
Lawson, T. G.	•	•		••	•	•	Eato
Lawton, A. R.			•			•	. Savai
Lawton, A. R., Jr.				•	•		Savai
Lester, G. N	•						. Cumr
Lester, D. P.	•						Cumi
Lester, R. E							. Savaı
Levy, L. C							Colur
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Levy, S. Yates	. Savannah
Lindsay, J. W.	Irwinton
Little, W. A.	Columbus
Lockhart, F. T.	. Augusta
Lochrane, Elgin	. Atlanta
Loring, C. A.	. Atlanta
Lumpkin, E. K.	Athens
Lumpkin, J. H.	. Atlanta
Lyon, R. F.,	Macon
Maddox, J. W.	Summerville
Martin, E. W.	Atlanta
Martin, J. H.	Talbotton
Martin, J. H.	Hawkinsville
Mathews, H. A.	Fort Valley
Minis, A.	Savannah
McCalla, A. C.	. Conyers
McCord, C. Z.	Augusta
McCutchen, C. D.	. Dalton
McDaniel, J. C.	Waycross
McIntyre, A. T., Jr.	Thomasville
McLendon, S. G.	Thomasville
McNeil, J. M.	. Columbus
McWhorter, H. •	Lexington
Meldrim, P. W.	. Savannah
Mercer, G. A.	Savannah
Mershon, M. L.	. Brunswick
Miller, A. L.	. Perry
Miller, F. H.	Augusta
Miller, W. K.	. Augusta
Milledge, John	Atlanta
Mitchell, J. B.	Hawkinsville
Mobley, J. M	Hamilton
Morris, Sylvanus	. Athens
Murphy, A. A	Barnesville
Mynatt, P. L.	. Atlanta
Neel, J. M.	Cartersville
Newman, Emile	. Savannah
Newman, J. C.	Atlanta
Newman, W. T.	. Atlanta
O'Bryan, F. M	Atlan <b>ta</b>

Pace, J. M	Covington
Pace, J. M. Palmer, H. E. W.	Atlanta
· ·	
•	Hawkinsville
Pate, A. C.	
Payne, J. C.	
Peabody, John	Columbus
	. Columbus
Phinizy, Leonard	. Augusta
Pierce, R. L.	Augusta
Pope, D. H	Albany
Pressly, C. P.	. Augusta
Price, W. P	Dahlonega
Printup, D. S., (deceased)	. Rome
Proudfit, A.	Macon
Reese, W. M.	. Washington
Reese, M. P	-
Reese, O	. Carrollton
Reid, S. A.	. Macon
Keid, H. M	. Carrollton
Rhett, W. H	. Atlanta
Riley, A. C	Fort Valley
Roberts, D. M	. Eastman
Roney, H. C	Augusta
Rountree, D. W.	. Quitman
Rowell, C	. Rome
Ryan, L. C	Hawkinsville
Russe!l, J. M	Columbus
Sanford, D. B.	Milledgeville
Seidell, Chas. W	Atlanta
Sessions, W. M	. Marietta
Shubrick, E. T.	Washington
Shumate, I. E	. Dalton
Sims, J. S	. Atlanta
Simms, A. B. (deceased)	. Covington
Simms, J. P. (deceased)	Covington
Smith, Burton	. Atlanta
Smith, A. W	Atlanta
Smith, C. C	. McVille
Smith. E. A.	. Eastman

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Smith, Hoke	Atlanta
Smith, J. M	Columbus
Spencer, S. B ,	Savannah
Stanford, L. L	Hamilton
Steed, C. P	. Macon
Stewart, J. D	Griffin
Stubbs, J. M	. Dublin
Sweat, J. L. Thomas, G. D.	Homerville
Thomas, G. D	. Athens
Thomas, G. E., Jr.	Columbus
· · · · · · · · · · · · · · · · · · ·	. Macon
Thomas, L. W	<b>Atla</b> nta
Tompkins, H. B	Atlanta
Тпрре, R. В	. Atlanta
Turnbull, W. T.	
Turner, H. G.	Quitman
Turner, J. S	Eatonton
Turner, W. A	. Newnan
Tye, J. L	Atlanta
Underwood, J. W. H	. Rome
Van Epps, Howard	Atlanta
Van Valkenburg, J. E	. Macon
Vason, D. A	Albany
Verdery, E. F	. Augusta
Wade, U. M	Sylvania
	Hamilton
Warwick, G. W	Smithville
Weil, S	Atlanta
West, C. N	
Westmoreland, T. P	. Atlanta
Whitehead, James	Warrenton
· ·	Milledgeville
Williams, E. T	Augusta
Willingham, T., Jr	. Macon
Wingfield, W. B	Eatonton
Womack, Emmett	Covington
Worrill, W. C.	. Cuthbert
Wright, Boykin,	. Augusta

# APPENDIX.

# ANNHAL ADDRESS

DELIVERED BEFORE

# THE GEORGIA BAR ASSOCIATION,

AUGUST 3D, 1887,

By the President, CLIFFORD ANDERSON.

#### Gentlemen of the Georgia Bar Association:

I regret that the exactions of official and professional duty have left me so little opportunity for preparation to meet the just expectations of this occasion. In grateful recognition of the honor done me, I would gladly, if I could, bring, for your entertainment, things new as well as old.

No less a philosopher than Gibbon has declared that "conversation enriches the understanding, but solitude is the school of genius;" solitude, not spent in slumber, but in deep and earnest meditation and thought. He who has not enjoyed such seasons of meditation has no conception of the companionships of solitude or of the capabilities and resources of the mind. He never hears the sweet music of nature, and never enters the work-shop of the soul. He is a stranger to the delights of the imagination—never visits her picture galleries, nor beholds the splendid panoramas which she spreads before the intellectual vision. It has been said that "thought rules the world." Certain it is that it is one of the mightiest forces which contend for mastery in human affairs. Without it the mind is not fed, and is unprepared to contribute to the entertainment of others.

In addressing a convocation of lawyers, one of the themes naturally suggested is the profession to which lawyers belong. Even a partial review of the achievements of lawyers, and of the impress they have made on the times in which they lived, will, I venture to assert, elevate

our conceptions of the dignity and usefulness of the profession, and excite our ambition to attain to more honorable distinction in its ranks.

The profession of the law is as ancient as it is distinct from the other vocations and callings of life. There were certainly lawyers in the time of our Saviour, for He refers to them by name. The fact that He does not allude to them, or rather address them, in complimentary terms, is not to be regarded as a condemnation of the profession or order to which they belonged. The men whom he addressed were learned in the traditions and customs of the Jews, and had doubtless imbibed the prejudices of their race against the meek and lowly person, who disregarded and made void their traditions, and who proclaimed the advent of a new dispensation, and himself as their Messiah and spiritual King.

Lawyers were a well-known order or class amongst the ancient Greeks and Romans, and were usually men of the highest character and the most liberal culture. Being generally men of intellect and education, they exerted a marked influence in affairs of state, as well as in the administration of the laws. Few ages or countries have produced as accomplished statesmen, orators and jurists as Pericles and Cicero; and yet they were but representative men of the bar of their day, loyal to the law and to the rights of the people, enemies alike of lawlessness and of the encroachments of power. They left their impress on the age in which they lived—their "foot-prints on the sands of time,"—and their fame and renown are among the imperishable treasures of succeeding ages.

The task of the lawyer, at that early period in the world's history, was a more difficult and delicate one than under the enlightened jurisprudence of the age in which we live. The laws then were not reduced to a system, as now, and the tribunals established for the administration of justice were less regulated and restrained by settled principles and recognized precedents. This was especially so amongst the Greeks, the machinery of whose early tribunals bore some similarity to that of our own. inasmuch as they had a body of citizens, or jurors, known as a dikastery, selected to try each case, and a magistrate to preside at the trial; but the jury, or dikastery, was practically omnipotent, being judges both of the law and fact, and having no regular code or system of laws to guide or control their decision. As illustrative of the administration of the criminal law, Grote, in his History of Greece, gives this description of the methods used to acquit a person on trial:

"That which an accused person at Athens usually strives to produce

is an impression in the minds of the dikasts favorable to his general character and behavior; of course, he meets the particular allegation of his accuser as well as he can, but he never fails, also, to remind them how well he has performed his general duties as a citizen; how many times he has served in military expeditions; how many trierarchies and liturgies he has performed, and performed with splendid efficiency. In fact, the claim of an accused person to acquittal is made to rest too much on his prior services, and too little upon innocence or justifying matter as to the particular indictment."

It was Pericles, I believe, who successfully defended a man, accused of murder, by causing his client to exhibit his empty sleeve, and appealing to the court in behalf of one who had thus suffered in defense of Greece in the Pelopenessian War.

Amongst the Romans, the law, as a science, approximated more nearly to a system; but it fell far short of being what Blackstone claims the common law of England to be—"the perfection of human reason." They also had something resembling "trial by jury," called the judex, and composed of judices, or jurors, and presided over by a praetor or magistrate. Their system of pleading was analogous to the system of special pleading which prevailed, until recently, in England. Until the pleadings were perfected so as to bring the parties to a distinct issue, no trial could take place. Roman jurists, moreover, have made valuable and enduring contributions to the literature of the legal profession, comprising a system now universally known as "the civil law," and furnishing a model for many existing codes.

The Roman lawyer, like the Great Apostle to the Gentiles, did "magnify his office." He had exalted conceptions of the purity and nobility of his profession. Whilst he expected and accepted the honorarium which custom imperatively exacted of the client, he was not influenced or controlled by mercenary motives or considerations. He esteemed his calling as a high and noble profession, not an ignoble trade or craft. He regarded the law as a system of justice, and himself as a repository of its principles, a guardian of its honor and a minister of the temple dedicated to its triumphs.

The limits appropriate to this address do not permit even a passing reference to the bar of other European countries, in comparatively ancient times, nor to show its influence in promoting their civilization and development. If time allowed, it might easily be demonstrated that men learned in the law have contributed, more than any other class, to their intellectual and moral growth, and have waged more

constant warfare than any other in setting bounds to the exercise of arbitrary power. It was because they were the relentless enemies of despotic power that the great Napoleon feared and hated them, and sought to degrade the bar of France, and, by depriving it of its ancient privileges, to emasculate, if not destroy, its influence. But, tyrant and well-nigh omnipotent as he was, he was forced to succumb. lectual force arrayed against him was too formidable. Nor had he counted on such courage and heroic devotion to principle as was displayed by that noble institution known as the "old French bar." This brings me to remark that lawyers, in all ages, have always been the pioneers and apostles of liberty. They imbibe its principles from their education and training. They are the natural enemies of tyranny in all its forms. To relieve the oppressed, to vindicate the innocent, to open the dungeon and free the victim of despotic power, are among the holiest duties of their sacred office.

Let us take a glance at their achievements in England, the source and inspiration of the laws under which we live. That wonderful piece of political mechanism, the British Constitution, comprising the fundamental rights of private property, of personal security and personal liberty, is mainly their work. Although existing largely in tradition, its principles are as well understood as if they were written on tables of stone. Under its limitations the prerogatives of the sovereign and the rights of the citizen are clearly prescribed and defined. The distinctive features of each department of government-executive, legislative and judicial—are set forth with such precision that each moves in its appropriate orbit with the approximate ease and certainty of the planets in their circuit around the sun. Its checks on attempted encroachments. by one department on the rights and privileges of the others, are admirably adapted to prevent such usurpations. The work of ages of resistance to power, it is an imperishable monument to the genius, the courage and the patriotism of the men who laid its foundations and builded thereon. Whilst inferior to our own Federal Constitution in clearness and scope, and in guarantees against oppression, it nevertheless breathes the same spirit which animated our fathers in laying the foundations of American liberty and furnished, in many respects, a model for the government which they established. It guarantees all the freedom practicable under the mildest form of monarchical government, and, although, not founding a government "by the people and for the people," it was, considering the difficulties, the dangers and the sacrifices encountered in the successful stages of its growth and maturity, a notable triumph of truth

over error, of justice over wrong, and of popular freedom over tyranny and oppression. It laid, broad and deep, the foundations of that noble system of jurisprudence, known as the "common law of England." This also was the work, chiefly, of lawyers. Its growth, too, was gradual; every precious principle it embodies has been purchased with blood.

Whilst Blackstone's well-known tribute to its merits may be the language of extravagant eulogy, it is certainly a marvel of human wisdom, a work whose fundamental principles will survive the innovations of time. Amid change, changeless; amid decay, enduring.

It was not without ceaseless warfare against the encroachments of power that the principles of the British Constitution and of the English common law were firmly established. Like all great achievements, they were tought with blood. Russell and Sydney and a host of others—the best and the bravest of England's sons—yielded their lives as a wilking sacrifice on the altar of human liberty; and Shaftsbury, whose only crime was his patriotic devotion to the cause of the people against the oppressions of the crown, was saved from martyrdom by the courage and independence of a grand jury which could neither be bought nor intimidated by the subservient instruments of despotic power.

All are familiar with the history of Magna Charta; how it was wrested by an outraged people, an unwilling concession from the profligate King John, and re-enacted and confirmed by subsequent kings and parliaments times almost without number. The right to the writ of habeus corpus and the right of trial by jury, justly regarded as the bulwarks of civil liberty, were thus firmly established as fundamental parts of the British Constitution; and have forever become the priceless heritage of all Englishmen and their descendants throughout the world.

Far be it from me to claim that these heroic sacrifices on the altar of English liberty, and these brave assaults on the encroachments of power, were made or led by lawyers only; but I do claim that they bore an honorable and, often, a conspicuous part in battling for the liberties of Englishmen, and in upholding the principles of the British Constitution against the usurpations of the crown. It is true there were members of the bar, especially during the reigns of the Charleses, who were willing tools of those corrupt and despotic sovereigns, and were a disgrace to the profession of which they were members and to our common humanity. But the character of the profession is not to be judged by the conduct of such infamous men. A Judas Iscariot

was a member of the College of Apostles, and a Benedict Arnold may be found in almost every army of patriots. Rather let it be judged by the conduct and characters of such men as Coke and Hale and Holt and Mansfield and Ellenborough and Thurlow and Erskine and Blackstone and Campbell, and a host of others whose names are worthy a place in the bright constellation of genius which illumined the judicial history of England. These men bent not the knee to Baal. Giants in intellect, elevated in character, true to the instincts of honor and faithful to every trust, they were the pillars on which the Constitution and laws of their country and the rights of the people rested in perfect security. The struggle for those rights was by no means ended by the grant or the subsequent enactments of Magna Charta. were the devices to nullify these enactments, in the practical administration of the laws. Subservient judges were selected and used to overawe and intimidate or to usurp the province of juries. In spite of the danger encountered by a judge who gave offense to rulers, in the time of Sir Matthew Hale, that upright and fearless judge held the scales of justice with an impartial hand and preserved his independence against all attempts to influence or intimidate him. Lord Campbell, in his Lives of the Chief Justices, gives the following account of a trial at which Lord Hale presided, as illustrative of his independence as a judge: "A trial was brought before him at Lincoln, concerning the murder of one of the townsmen, who had been of the King's party, and was killed by a soldier of the garrison there. He was in the fields with a fowling-piece on his shoulder, which, the soldier seeing, he came to him and said, 'it was contrary to an order the Protector (Cromwell) had made, that none who had been of the King's party should carry arms,' and so he would have forced it from him; but as the other did not regard the order, so being stronger than the soldier, he threw him down, and having beat him, he left him. dier went into the town and told one of his fellow-soldiers how he had been used, and got him to go with him and lie in wait for the man that he might be revenged on him. They both watched his coming to town. and one of them went to him to demand his gun, which, he refusing, the soldier struck at him, and as they were struggling, the other came behind and ran his sword into his body, of which he presently died. It was in the time of assizes, so they were both tried. Against the one there was no evidence of forethought felony, so he was only found guilty of manslaughter, and burned in the hand; but the other was ound guilty of murder, and though Col. Whaley, that commanded the

garrison, came into the court and urged that the man was killed only for disobeying the Protector's orders, and that the soldier was but doing his duty, yet the judge regarded both his reasonings and his threatenings very little, and, therefore, he not only gave sentence against him, but ordered the execution to be suddenly done, that it might not be possible to get a reprieve, which he believed would have been obtained if there had been time enough granted for it."

As still further evidence of the fearlessness of this en.inent and immortal judge in discharging his duty and faithfully administering the laws, even at the peril of offending such a tyrant as Cromwell, Lord Campbell relates that—

"On another occasion he defied His Highness not only with spirit, but with perfect propriety. A government prosecution coming on for trial at the assizes, Hale received information that the jury had not been fairly named. To get at the truth, he questioned the sheriff, who said, 'I refer all such matters to the under-sheriff.' The under-sheriff acknowledged that the jury had been returned by Cromwell. The judge, thereupon cited the statute whereby all juries ought to be returned by the sheriff or his lawful officer;' and this not being done, he dismissed the jury, and would not try the cause. When he came back to London, the protector, in a passion, severely censured him, saying, 'You are not fit to be a judge.' The only answer was. 'Sir, what your Highness has said is indeed very true.' "

No wonder that such a man was universally reverenced in life and regarded by the people as a saint after his death, and that so great and good a man as Richard Baxter should have written of him such a eulogy as this:

"Sir Matthew Hale, that unwearied student, that prudent man, that solid philosopher, that famous lawyer, that pillar and basis of justice (who would not have done an unjust act for any worldly price or motive), the ornament of his majesty's government and honor of England, the highest faculty of the soul of Westminster Hall, and pattern to all the reverend and honorable judges."

If time permitted, instances of similar fearlessness and fidelity on the part of Mansfield and Erskine and others might be cited, illustrating their devotion to the principles of justice and constitutional liberty. So, too, in our own country, it was the fervid eloquence of a Virginia lawyer which kindled the fires of the Revolution; and lawyers were amongst the foremost champions of liberty in the field, on the hustings and in the halls of legislation throughout the struggle for independence. Lawyers aided in formulating the fundamental principles of civil and religous liberty which are embodied in our Federal and State Constitutions; and Marshall and Story and their associates have, by their lucid exposition of those principles, put them into successful practical operation and established them on foundations which cannot be shaken. Webster, Clay and Calhoun—that grand triumvirate of American lawyers and statesmen—spent their lives in elucidating and defending constitutional liberty, in the forum and on the floor of Congress, and in extending sympathy and encouragement to the oppressed of all nations in their struggles for independence; and amongst the most trusted lieutenants of Lee and Johnston were leading representatives of the bar, who, laying aside the gown and the ermine, led battallions and brigades in vindication of what they conscientiously believed to be the rights of freemen as guaranteed in the fundamental law of the land.

But lawyers have not been conspicuous only as the champions of liberty. In all lands they have been noted for their learning and statesmanship. As a consequence, they have exerted a wider influence in shaping legislation and in administering government, in all its various departments, than any other class of citizens. On them, chiefly, has devolved the duty of negotiating treaties and of formulating those principles of international law which regulate nations in their intercourse and trade with each other. They predominate in legislative assemblies and in constitutional conventions, and, in all republican governments, are more frequently than others called to fill the high office of chief magistrate of the nation. To be thus honored and trusted is a tribute to their character, to their integrity and sense of right, as well as to their patriotism and learning. Much as they are criticised by the ignorant and narrow-minded, it is undeniable that they are, as a class, honorable and upright men, loyal to law and to the cause of constitutional liberty—the chief pillars of state and the ornaments and supports of society and civilization.

In Great Bitain, who have been the superiors in intellectual and moral graces and excellences of Hale, of Mansfield, of Stowell, of Burke, of Pitt, of Erskine, of O'Connell, of Romilly, of Blackstone, of Cockburn, of Coleridge and of Charles Russell? And, in this country, what a bright array of brilliant intellects have adorned its bar and graced its temples of justice! As great and good men, who have been the compeers of Marshall, of Story, of Webster, of Clay, of Calhoun, of Choate, of Stansbury, of Crittenden, of Wirt, of Pinckney, of Prentiss, or of Berrien, Stephens, Toombs, and Joseph Henry Lumpkin, of our

own State? Time would fail me to mention one tithe of the great and good men of our profession whose lives have shed lustre on the history of our country and State.

Brethren of the bar of Georgia, we have no cause to be ashamed of our profession. Ours is not only a goodly, but a noble heritage. Ashamed we are and ought to be of those who dishonor a vocation so elevated in its aims, and whose roll of membership is adorned with the names of so many illustrious men.

Let it be the high purpose of this Association to close the door of our noble profession against those who are unworthy a place in its membership; to rescue it from the demoralizing influences which assail it; to reform its code of ethics; to restore its esprit du corps and the high standard of honor and rectitude which prevailed in the days of Berrien, Law, Lumpkin, Nisbet and Warner; and to save it from the base and degrading influences of this degenerate age. Be this its high and holy aim, earnestly and persistently pursued, and this organization will be a blessing to the profession and to the State!

# THE CIRCUIT JUDGE.

### A PAPER

READ BEFORE

# THE GEORGIA BAR ASSOCIATION

AUGUST 3RD, 1887.

#### BY JOHN W. AKIN.

If any apology were needed for presenting to this body such a theme, our relationship to him, our contact with him, the weeks we spend in mutual conflict before him and sometimes with him, the months we toil in preparing to meet him, and the fact that so many of us desire to be him, is ample excuse for addressing you on THE CIRCUIT JUDGE.

The Circuit Judge is an old institution. He has been on the bench from a time "whereof the memory of man runneth not to the contrary." In turban, in toga, in silk robe, in Prince Albert,—on Egypt's sands, on Areopagus, by yellow Tiber, in the green fields of Albion, on the red old hills of Georgia,—he has judged and misjudged.

He is also a divine institution. God established

THE JEWISH JUDICIARY.

After their wanderings in the wilderness, he brought the Israelites into the land of Canaan and gave them judges to rule over them. These judges are not appreciated as they deserve; for, in spite of environments, they were remarkable men. There were Othniel and Ehud, and Elon, and the valorous Gideon, and Tola, who won for himself the title of "Defender of the People;" her honor, Judge Deborah, the only woman on the bench, a poet, a singer, a warrior; Samson, distinguished for physical strength and moral weakness, especially as concerned the fair sex. In one thing Samson reminds us of some modern judges: for we have heard expressions from the bench which seemed to indicate that the judge used, like Samson, the jaw-

bone of an ass. There was Jepthah, the brave, the fearless judge,—a bastard, an outcast from his father's home,—who so overcame the difficulties of his early youth that he rose to eminence as deliverer of his people. His zealous vow and its tragic results embalm his name in pathetic sadness. Even the Bible does not dissipate the humor of the scene, when we see Judge Abdon, distinguished only for his large family, riding the circuit, followed by his seventy sons astride seventy asses.

These judges held office during life or good behavior. They sat upon the bench an average of thirty years each. Only one was deposed from office, and he for private faults. The last but one is remembered for his sudden death of a broken heart. Except the last,

#### NONE RESIGNED.

They got no salary, so far as the records show. In this respect, they resemble the Georgia judge to a painful degree. None of them ever went to Congress. They seem never to have discovered what fine opportunities for electioneering are offered by the bench. From Dan to Beersheba, they rode the circuit and tried causes of all sorts. distinctions of actions or forum existed. They were both judge and and chancellor, court and jury. They had no statutes to construe. Hence, we find no complaint that the judiciary usurped the province of the legislature in that day. A few of the most remarkable records are briefest. Some of the longest are undisturbed by any break in the monotony of the bench. Some are merely mentioned-distinguished for nothing. They were probably easy-going fellows, who tried to please everybody. How chosen, we do not know. Certainly, they were not appointed by the Governor nor elected by the Legislature. We therefore read of no bargains made by them,—no trades. Nor do we see them congregating at Shiloh or Bethlehem, log-rolling to help their friends into office.

Wonderful judges! Inimitable circuit-riders! Their judgments were never reversed. When appealed from, it was to the sword, and, without exception, they were sustained. Not one is charged with incompetency, and not a suspicion is cast on their official integrity. The last of these thirteen successive judges is Samuel,

#### DEDICATED TO THE OFFICE

from his early youth and trained for it from his mother's breast. In his old age, Samuel assembles the people together. Another dispensation has arisen, and Samuel resigns the judgeship to become Attorney-

General to the new king. His record is made up. His last judgment is rendered. As he lays aside the spotless ermine, he calls upon the assembled multitude to bear witness to his official integrity, in these noble words: "Behold, here I am; witness against me before the Lord. Whose ox have I taken? or whom have I defrauded? Whom have I oppressed? or of whose hand have I received any bribe to blind mine eves therewith?"

The Roman judge decided causes on principles of a jurisprudence greatly contributory to ours. But in England, to whose judicial institutions we involuntarily turn whenever we make inquiry into our own, we first find the Circuit Judge administering the law over whose hoary principles the Georgia law-student so often nods. In the early part of the twelfth century, a system of

#### ITINERANT JUDICATORIES

was instituted in England. Indeed, as far back as the time of William the Conqueror, we find a king occasionally commissioning a judge to go out into the realm and administer justice. But not until exactly six hundred years before our Declaration of Independence did the itinerant justices become an established institution of the kingdom. There were then six circuits and three judges to each circuit. Soon the number of circuits was reduced, and the number of judges to the circuit increased. Thus began this celebrated system. The Circuit Judge here first became a fixture—an indissoluble part of English jurisprudence He has since followed the English emigrant

#### AROUND THE WORLD.

His jurisdiction is co-extensive with the Anglo-Saxon race. He pro nounces his judgments wherever the English language is spoken; and on his bench, as on the flag of that kingdom whose history is coeva with his own, the sun never sets.

These judges had great powers. They were executive agents of the king. They had certain duties as to collection of his fines and for feitures. They were charged with caring for the loyalty of the subject having to cause every citizen to take the oath of fealty at stated periods and even to act the spy on his political opinions. It is not strange therefore, that a judiciary charged with such duties, deriving office from the king and holding it at his pleasure, should contain some unworth sycophants—even some corrupt and

#### CONSCIENCELESS TYRANTS.

The wonder is that so many preserved stainless characters, both pe sonal and professional. It is a tribute to that Anglo-Saxon virtue

moral responsibility, that these itinerant justices, amid so many temptations and allurements, and under such despotic influences, became, even in a comparatively unenlightened era of jurisprudence, distinguished for probity of judicial conduct, purity of private life, and administrations which elevated and developed the then crude state of the law.

It may be well surmised that, but for the high character of this primitive judiciary, that reverence for precedent which is instinctive in the English lawyer would lack its present influence.

They had no precedents themselves, to speak of. A large law library at that day could have been carried in the saddle-bags. Almost entirely they were compelled to rely on mother-wit and natural reason, interpreting and gradually amalgamating the divers local customs of the realm. No law schools afforded them opportunity for interchange of opinion or study of manuscripts. Through the Latin of the Roman law.

#### THEY STRUGGLED BY RUSH-LIGHT,

to adapt, to the legal system of a Christian country, the principles of a pagan jurisprudence. The rude customs of unlettered Saxons were pitted against the polished institutes of cultured Romans. But in those rude customs was embalmed the genius of a people who were honest by instinct, shrewd by nature, obstinate by conviction, and liberty-loving by inheritance. This conflict was decided by these early English Circuit Judges. Their successors have only amplified their decisions and adjusted them to changing circumstances. The result is seen to-day in the comparatively small, and gradually decreasing, area where the civil law prevails; while the common law, taking on the gloss of Roman polish, but retaining a vigor strong as the heart of English oak, follows civilization around the world, strikes into the frontier forest along with the pioneer's axe, locks the wheels of Juggernaut, implants its principles in Australian wilds, and rules the courts of the Great Republic.

#### GREEN BE THE MEMORY

of these old Circuit Judges! Westminster Abbey guards the dust of many heroic dead. But its walls, so redolent of fame, hold none who, in those inestimable blessings that flow from an enlightened jurisprudence, have contributed more to the good of mankind, than those forgotten judges who sleep on England's bosom in graves unknown!

## THE AMERICAN CIRCUIT JUDGE

is one of our happiest inheritances from the mother country. With incomparable advantages over his English prototype, he has stamped

his imprint on our society and our government. Having, to guide him. precedents almost without number, his personality is largely diminished. He is circumscribed, more or less, by limits marked out by his predecessors. Comparatively few questions have come before him on which the accumulated lore of the law has shed no light. The thoroughfares he has trodden have been marked out. In the caravan of cases whose travel on these judicial highways has marked the century, he has found some strangers. In guiding such strangers to the oasis of final judgment, he has used the light of precedent as far as it shone; and, for the rest of the journey, he has illumined the darker passages with characteristic American shrewdness. Armed with the priceless heritage of English law,—the legal legacies bequeathed to all generations by Coke and Blackstone, by Hale and Hardwicke and Mansfield.—he has followed the pioneer into Southern swamp and Northern wilderness. There, circuits were laid out, and there they have remained, through our wonderful national growth, an inestimable influence for public good.

While the C.rcuit Bench has impressed our institutions, our institutions have also impressed the Circuit Bench. The influence of a free people whose officers are their servants, and not, as in England, their king and lords, has made itself felt on the bench. What a contrast between the old English judge, with his power of probing a citizen's conscience to find a trace of d sloyalty to the sovereign, and the American judge, who cannot bring the meanest of the populace before the judgment seat until his neighbors have first accused him! The difference, also, in the source of their authority, tends to bring the American judge nearer to the citizen. The English judge held his office by the grace of the king. The American judge holds his commission from the sovereign people, either by their direct ballot or through selection by public servants chosen by their suffrages. difference in their accountability is also influential. The one was responsible to a prince whose will, at that time, was law; the other is watched by the people—a jealous master,—who demand a spotless ermine. When the old English judge rode the circuit, the jury was hardly more than the trappings of the court. The American judge presides before a jury whose will he is in most things bound to respect, and whose verdict should be absolutely untrammelled by the slightest opinion from the bench.

One thing that has contributed so largely to the independence of the Circuit Judge, in England and America, is his

ABSOLUTE FREEDOM

from liability in damages for any judicial conduct. It is true that in

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the case of the *Marshalsea*, (10 Coke, 68) it was held that a judge with limited jurisdiction was liable in damages for injury inflicted by exceeding his jurisdiction. While it is not likely that any court where the common law prevail, would now follow such a precedent, this decision was put on the ground that the inferior judge, in exceeding his jurisdiction, ceased to be judge, and his acts then became only the conduct of a private citizen usurping an office.

In the case of *Mostyn vs. Madrigas* (Cowp., 161), the governor of Minorca was sued in damages for imprisoning a citizen. This governor, in addition to his executive duties, exercised some judicial functions. But it was held that in the act complained of, he acted only as governor, and hence could not claim immunity from the suit on the ground of his office as judge. And Lord Mansfield declared in his opinion, that judicial conduct is wholly exempt from civil liability, and that the judge is perfectly secure from pecuniary responsibility for damages, no matter how excessive, arising from his acts as judge, no matter how erroneous.

In one instance the Recorder of London, sitting as judge of oyer and terminer, fined and

## IMPRISONED A JUROR

for returning a verdict of which the judge disapproved. If a judge should be responsible for any act, it would seem that such an outrage should be dearly paid for. But the court (*Hammond vs. Howell*, 2 Mod., 218,) while admitting the outrage, denied the remedy.

In the reign of Edward III, a judge of over and terminer was actually indicted for falsifying the court record, in entering an indictment for a trespass as an indictment for felony; but the suit was denied. In the reign of Henry VI, a judge of record was sued in case for fraud in executing the office of escheator. This suit was likewise denied. Indeed, in no English case, excepting the Marshalsea, has any person holding judicial commission ever been adjudged responsible to the losing party for his conduct; and, as remarked above, this case was decided on the ground that the magistrate of a court of limited jurisdiction was, in exceeding his jurisdiction, a trespasser and not a judge. Lord Coke rendered this judgment; and it is but just to say that it has not added to his fame. But he atoned somewhat for it shortly afterwards; for, in Floyd vs. Barker (12 Co., 23,) he held grand jurors exempt from suit for their conduct as such, and went out of the record to throw around judges the same protection, so far as the authority of his great name would do so.

In the face of such authority, the inquisitive lawyer will be surprised at the number of such actions brought against judges. Nor have such cases been confined to England. The great

#### AMERICAN PRECEDENT

on this question was decided in 1810 by New York Supreme Court (Yates vs. Lansing, 5 Fohns., 282). The chancellor of the State committed a man for contempt. He was released on habeas corbus. The chancellor again imprisoned him forty-eight hours. On his release, he sued the chancellor for \$1.250, under a statute which fixed this sum as a penalty, recoverable to the use of the injured man, from any person who aided in recommitting, the second time, on the same ground, one who had been discharged on habeas corpus. The chancellor pleaded his office and averred his conduct to have been as judge. On issue joined on demurrer to the plea, the action was dismissed. Unlike the case of the imprisoned juror, this suit against the chancellor was denounced as an outrage; for it was held that the action of the chancellor was right, and that plaintiff was improperly discharged on the first habeas: corpus, and very properly committed by the chancellor the second time. But the court seized the opportunity to deliver an exhaustive opinion, ably and elaborately rooting in American soil the time-honored English doctrine on this subject. Chancellor Kent was then Chief Justice, and delivered the opinion, which is marked with unusual warmth. Notwithstanding, one judge expressed his dissent from some of the propositions enunciated, and on the main question pronounced no opinion. It is believed that few American judges have been so attacked, and that none have ever been held liable.

It were idle to comment, before this learned audience, on the salutary influence of this rule. It is strange, indeed, that any enlightened people would permit its judiciary to be so harassed. And yet

#### IN CULTURED FRANCE,

the code of procedure expressly accords to the aggrieved party a right of action, in prescribed cases, against the judge who decides against him. It seems that such has always been allowed. Not till 1540 wasthis right limited to cases of fraud on part of the judge. Prior to that time, he was held liable when he acted "without excuse"; which would cover just such a variety of cases as the tribunal trying the cause might happen to think included in the meaning of "excuse." Data are not at hand to show how this execrable rule is made use of, nor how often the French judge is dragged before the courts to answer for his decis-

ions. It is reasonable to suppose such spectacles more frequent than pleasant, if France, like some other States, nurtures the hungry lawyer so ravenous for a fee that, as Job's war-horse did the battle, he "smelleth" the law suit "afar off."

If comparisons are odious, we need not mar this occasion by measuring the latter by the former Circuit Judges. And yet it may interest us to glance at some of the former, if thereby the latter will be illustrated. If time availed us, we would doubtless love to linger longer in contemplation of

THEIR SPLENDID EFFIGIES.

If biography is history teaching by example, we may learn how a great lawyer and an unusually erudite man may disfigure his career by an exhibition of superstition which the meanest judge in this day cannot even appreciate. Such we see, when Sir Mathew Hale instructed the iury that no doubt could be entertained that "such persons as witches do exist." So, we are struck with the extent to which the duties of the bench absorb the mind of a conscientious judge, when we hear Lord Tenterden, in the very article and delirium of death, exclaim with his last breath, "Gentlemea of the jury, you may now retire." So we are astonished at the depth of feeling which a judge may develop in a cause when we see Lord Ellenborough, trying his last case, in which he displays so much of interest that the trial became almost a controversy between the judge and the defendant; and, when the jury disregarded the judge and found for defendant, so mortified at the verdict that to it is attributed the hastening of his death. Our devotion to the supremacy of the civil over the military power is gratified, when we observe Lord Holt, warning the squad of soldiers that if they fired on the mob and one man should be killed, he would see to it that "every soldier in the company was hung;" and going in person with the officers of court, and dispersing the mob without bloodshed. We are reminded, when we think of Lord Hardwicke, of those noble words of his which ring through all the halls of justice, a warning against allowing thoughtless feeling to warp the principles of right: "I have always a great compassion for wife and children, yet, on the other hand, it is possible if creditors should not have their debts, their wives and children may be reduced to want."

Our eyes are charmed at these and many more such pictures which the memory conjures up. But chief of charmers is

THE EARL OF MANSFIELD.

Gifted in personal beauty, winsome in manners, learned, polished, profound, eloquent, original; reverencing precedent, but boldly creating

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where no model appeared; respecting public opinion, but unmoved by the clamors of the populace; taking a laudable interest in public concerns, but superior to the prejudice of a partisan; aspiring to statesmanship, spurning the arts of a demagogue; courteous to princes whose causes he tried, dignified to the mob whose fury spent itself in wrecking his home; friend to the rich, benefactor to the poor; admired by the bench, beloved by the bar; the noble Lord stands facile princeps among English judges. Looking back, at the end of a long and useful life, upon the creations of his legal genius—commercial law emancipated, the Marine insurance contract developed, the bill of exchange expanded into the most useful servant of commerce,—he may well have exclaimed with the poet-laureate of the Eternal City:

"Exegi monumentum, ære perrennius, Regalique situ pyramidum altius."

The modern judge whose career is the subject of detraction may find a grim consolation in the reflection that even Mansfield had his enemies; that he was the object of mob violence; that men of high and low estate united in villifying him; that his career was stormy; that he was accused of distorting the law to suit his own wishes, and of making law instead of construing it. The exquisite gall of Junius was never more viciously displayed than when he aimed his poisoned shafts at the fair fame of Mansfield. But the mob is dispersed; the detractors are forgotten; Junius is admired, not for what he said, but for the way he said it; the storms have lifted, and the memory of this great judge is undimmed. So it ever has been, so it ever will be, with that judge who, conscious of his own integrity, heeds neither fawning nor frowning, and is courageous of truth to the end.

It will be remembered that our own history is not entirely wanting in examples of popular persecution of a brave judge. The most notable instance occurred in comparatively recent times. It became the duty of the Supreme Court of the United States to construe a part of the Constitution referring to a question at that time the subject of political agitation.

THE DRED SCOTT CASE

came before the court, and the court, regardless of clamor, decided it, by a majority of seven to two, in accord with historic and legal truth. Chief Justice Taney delivered the leading opinion. He had hardly finished its reading before the boasted "Atmosphere of Freedom," from Maine to Kansas, became sulphurous with execrations. The

same men who denounced the Constitution as a "league with Death and a covenant with Hell," denounced with more bitterness the court which declared that the Constitution meant what it said. The Chief Justice in particular was singled out for most virulent abuse. Political conventions, popular meetings, church conferences, vied with each other in the epithets of slander. He was charged with bargain and sale, with disclosing the secrets of the bench, with besmirching the ermine by a corrupt bargain for political effect. It adds nothing to the fame of Abraham Lincoln that he repeated this unworthy and malignant charge. It was to be expected of such a man that, as President, he should utterly ignore a decision of the same court, which declared that his conduct as executive was in violation of the supreme law of the land.

But the

#### REFINEMENT OF VENOM

was reached when death knocked at the door of this brave judge. had been customary, during the entire history of the Republic, to commemorate our departed Chief Justices by a marble bust in the National When the bill for thus embalming the memory of Taney was presented to the Senate, so violent was the opposition of the majority that the effort was abandoned. Under the leadership of Charles Sumner, this majority spread on the records of these Ambassadors of the States epithets of obloquy and studied phrases of infamy, aimed at the name and fame of the departed judge. Be it said to the shame of the profession that lawyers joined in this unworthy tirade. Be it said to the honer of the bench, that, out of eighty-eight years of his life, intelligent malice could find no other ground of cavil than this most righ-Be it said to the praise of human nature and the teous judgment. glory of the American name, that, ten years afterwards, the passion of the hour had so far subsided that the National Legislature accorded this tardy tribute to the memory of this pure and stainless life!

If I were called upon to express in one word that characteristic of the English and American Circuit Judges which, throughout their history is most marked, my answer would be *Integrity*. Is it not remarkable that, out of the long list, so few have forgotten the honor of the bench? Is it not worthy of note that, in spite of human nature such as ours, in spite of the blandishments of princes, and, what is more dangerous, the tumult of the people, in spite of gold, in spite of steel, the history of the circuit bench is so stainless? While the easy virtue of other judiciaries is the butt of popular gibes and the jest of the stage.

#### THE MASCULINE PURITY

of the Anglo-Saxon bench is so universal as to excite no comment. is doubtful if any other department of government compares, in the official integrity of its officers, with the Bench Presidents accept gifts which would blast forever the fame of a judge; senators and representatives amass fortunes in "wavs that are dark;" aldermen get wealth by "tricks that are vain;" but the Circuit Judge dies poor. By a single decision he could ofttimes gather in his thousands. By only disclosing in advance to a confidential friend an intended ruling, be it the perfection of justice, he sometimes has an opportunity to heap up a glittering pile. Occasionally, such vast interests hang upon an expected judgment that by its effect on the markets, millions are made and unmade in a day. Through such stupendous, though often insidious temptations, the ermine passes with hardly the smell of fire. This almost unbroken record of judicial integrity is not the less remarkable because the chances of detection are so small. The bench seems to be pure. not so much because it fears exposure, as because it loves purity for its own sake. Indeed, instances are not wanting where the fortuity of circumstances has brought to the bench men whose previous career promised only continued depravity, and yet who seemed, by mere contact with the judgment-seat, to be elevated into an atmosphere of probity to which they were strangers before. Some of the most illustrious of judges have received their office as a reward for at least questionable, if not disreputable, political services. But, at donning of official robes, they seem to have so shaken off the habiliments of error, that their judicial careers were distinguished not less for lucid learning than for luminous virtue.

If time availed, it would interest if not instruct, to take more than passing notice of the

# Circuit Judge in Georgia.

He was a splendid figure in the epic era of our commonwealth, when, unfettered by a code, unenlightened and unbefogged by a maze of decisions through which to search for the last one on the point at issue, he drew for judgment on the rich treasury of the common law, and listened to the rare eloquence of a royal race of advocates who came to the forum fresh from communion with nature in her wild, uncultured beauty. Of their labors little is left of record. Of their assiduous efforts to preserve uniformity of procedure in the various circuits, we are reminded by their conventions, at which points of practice were dis-

cussed, and decisions on important topics read, and approved or rejected by a majority vote.

Dudley and Charlton have preserved in their reports some of these most noted opinions. It is only justice to say that in these volumes, now so seldom consulted, are found gems of legal lore. One opinion in particular is recalled as having been characterized by a distinguished jurist as worthy any court in ancient or modern times.

It is

#### A CURIOUS FACT

that Georgia had a Chief Justice when the Superior was her highest court, and that this Chief Justice had the whole State for his circuit, and was the only judge who rode a circuit. From 1777 to 1789 the Superior Courts were composed of this Chief Justice for the State at large, and three Associate Justices for each county. Probably it is the shade of this circuit-riding Chief Justice which offers to be resurrected in the proposition, lately advanced, to have one Superior Court judge for the State at large, whose duties shall be the assistance of overworked judges. Considering that the genius of our institutions requires the completest independence of the legislative and judicial departments, it is remarkable that, of the one-hundred and ten years of Georgia's sovereignty, her Circuit Judges have been for nine years elected by the people of their respective circuits, for thirteen years appointed by the Governor, and for eighty-eight years elected by the General Assem-Thus, while under the American theory the three departments of government should be officered by the direct voice of the people, and while probably the most palpable violation of this theory lies in permitting the law-making power to choose the law-construing power, yet it remains that the most perfect theoretic method has been in vogue only one-tenth as long as the most imperfect theoretic method. elections by the Legislature have so long obtained is still more striking when we remember that, during these eighty-eight years, the unsuccessful candidates have far outnumbered the happy few, and that each of these unsuccessful candidates is apt to become at once an ardent enemy to this method of election, from sincere conviction that the Legislature is really incapable of appreciating true merit.

One scene in the history of the Georgia Circuit Judge deserves embalming in more pretentious records than those of this Association. This scene covered those few years immediately succeeding the war, in which

#### THE ALIEN AND THE RENEGADE

fattened on the miseries of our people. Few who did not share that wretchedness can imagine the utter destruction, not only of physical resources, but also of the reign of law, which overspread our State in With rare courage and unequalled tact, our Circuit Judges addressed themselves to the reorganization of courts and the reinvigoration of our judicial system. What disastrous violence, what untold evils, were averted by their prompt and brave assumption of the responsibilities of that trying hour, can only be imagined. When it is remembered that millions of ignorant slaves were thrust upon a people wasted by such a war, and that thousands of disbanded soldiers, ragged and hungry and without occupation, roamed over the land, the quickly established supremacy of law is marvelous. Fortunate it was that these Circuit Judges had to deal with a people as loyal to their duty to the courts of their State as they were loyal to the political faith in which they were reared. Heroic beyond expression as were these troops in battle, more heroic still were they in becoming, in the face of such discouragements, the faithful defenders of the civil power. The Georgia Circuit Judge was to be tried still further. When the military, in undisguised violation of all legal right, was thrust upon us, the Circuit Judge Threats did not move him. Offers of promotion were spurned. If he succumbed to physical force, it was not for fear of the bayonets which gleamed in the court-yard. The fearless courage with which he braved the perils in his path deserves to win for him that epitaph applied for similar conduct to "the noblest Roman of them all," " In arduis fidelis,"

#### THE EDUCATING INFLUENCE

of the circuit bench is often overlooked. The Supreme Judge comes in contact with only the learned few. But the Circuit Judge is always in the public eye. The unlettered crowd which attends and often throngs his steps are keen of perception and quick to learn from external sense. The judge is to them the incarnation of the law. As the books are closed to them, his words are the only authoritative expression, accessible to them, of that great rule of action which holds society together. The court room is the law school of the public. From what transpires there, the public forms its ideas of legal right and wrong. The sense of justice innate in every breast is often rudely shocked by judicial proceedings which the public cannot reconcile with its conceptions of morality. From such scenes the people turn away with, first, a decreased

respect, and afterwards sometimes a contempt for law; and in so far as the sceptre of law, to be effective of good, must sway the popular breast, in so far does it fail of its mission when it is unsupported by the public notion of right and wrong. Who can limit the injury inflicted by such a state of sentiment?

But of all the paraphernalia of justice, the Circuit Judge is most rigorously and ceaselessly watched, and most mercilessly held to account. Nor is this scrutiny confined to his judicial conduct. His private life is the cynosure of all eyes. His peccadilloes are magnified into faults, his faults into public evils. Even his mistakes are often distorted into willful errors. Without debating the justice of such judgments, the fact remains that the Circuit Judge is inspected as no other public servant. Nay, more: by a sort of

#### POPULAR TRANSFIGURATION

his personality is unconsciously mistaken for the fleshly interpretation of justice. Not having the marble image, with its blindfold and scales to gaze upon, the public measures the idea that image represents by the mental and moral attainments of its expounder and executor. Burdened with such responsibility, the Circuit Judge bears on his shoulders a weight utterly out of proportion to his comparative station among public servants. With what tremendous energy, with what sleepless vigilance, therefore, should he guard public and private life, and walk before men "without fear and without reproach!"

# THE MODEL CIRCUIT JUDGE

is a theme worthy the painter's brush, the sculptor's chisel and the poet's harp. We may not have found him yet, but we may well pause to ponder on his royal image. Unlike the wistful search for the golden fleece, our seeking will not be in vain; for in the quest, we must needs hold up before us the picture of such illustrious virtues, that our own lives will thereby be inspired, as the sea, gazing on the sun, catches his glow in her waves. In legal education he has not spared assiduous study, preferring final excellence to early display. His mind is stored with the great principles of the law. Versed in modern decisions, giving due weight to latest opinions, he does not stick in the bark, and to him the lowest argument is stare decisis. Profound in the law's learning, lucid in its application, luminous in its exposition, he knows no party, and, on ascending the judgment seat, strips himself of bias. He is merciful to the prisoner until this mercy comes in conflict with justice to the public. He is gracious to the bar, until graciousness

becomes a barrier to the highest usefulness. He is considerate of the convenience of suitors, until kindness becomes antagonistic to duty. Appreciating the help to be derived from argument, he has the courage and tact to curtail repetition and tediousness. Regardful of the particular case on trial, he does not forget that the public is a party to every cause. Careful to refrain from the semblance of advocacy, he is vet the implacable foe to wrong, and the faithful friend to right. Justice is his mistress, and his devotion to her is without blemish. the rights of juries, he is nevertheless jealous of the prerogatives of the bench. Appreciating that the law's delay is often productive of more evil than the law's imperfections, he permits nothing to stand in the way of celerity and promptness. At war with oppression in every form, he allows neither the love of gold to seduce him from justice to the poor. nor the fear of popular wrath to frighten him from equal justice to the Feeling that interest in public affairs which is the safeguard to republics, and which every patriot ought to feel, he does not degrade his office by low scrambles for the political preferment of himself or Prompt in deciding, he is too dignified to argue with counsel, and too careful of time to stop the wheels of court while he gives a reason for every ruling. He knows no fear but the fear of God; he feels no love but the love of truth: he has no ambition but to walk uprightly before men, with unsoiled honor and blameless life.

Brethren of the bar, you will not think me presumptuous if I remind you that the judge is only a part of the court.

#### THE ATTORNEY

is its right arm. Without the aid and co-operation of the bar, the bench is emasculated. Public virtue suffers from antagonism of feeling or of conduct between judge and lawyer. It is more popular than praiseworthy to sneer and jest at the sometimes real, and often fancied, shortcomings of the bench. Indeed, it is too often true that the most active jesters and fault-finders are those whose standing anxiety to be subjected to the same gibes would be pathetic, if it were only disinterested.

The bench is the highest goal of the bar; but while the laurel is so rare and lovely, beneath its beauty lurk insidious stings to him who wears the crown. If we can, by courtesy, by patience, by forbearance, by sympathy, assuage one of the many pangs which too often afflict the Circuit Judge, our labors will not be in vain.

# PROFESSIONAL RESPONSIBILITY.

#### A PAPER

READ REPORT

# THE GEORGIA BAR ASSOCIATION,

AUGUST 3RD, 1887,

By I. E. SHUMATE.

All that is undertaken in this paper, is to invite the members of the Association to accompany the writer along certain lines of thought, practical and pertinent to the times, with the hope that their own reflections, stimulated possibly by his suggestions, may prove profitable. Even in so unambitious an undertaking, the danger of fatiguing the patience of so learned and critical an audience is great. However, the proverbial politeness of the profession and their complete facial control in the presence of disappointment, acquired by painful discipline, can be relied upon with reasonable confidence. There is relief, too, in the thought that the affliction, be it light or grievous, is but for a moment.

A year ago the retiring president of the Association, in an admirable address, propounded and discussed the proposition: "Lawyers, the trustees of public opinion." In that discussion, the prominence of lawyers and their controlling influence in public meetings were affirmed, without arrogating to the profession any natural mental superiority, but attributing their recognized influence to the superior training acquired in the study and the practice of the law, and to the practical cast of mind resulting from constant contact with practical affairs. trained lawyer, with readiness approaching intention, perceives the true issues involved in any proposition, and states them clearly and con-He marshals his facts rapidly and plausibly, and presents his arguments pointedly, and, frequently, if occasion require, powerfully. He often exposes a fallacy by a vigorous dash of sarcasm, and effectually punctures plausible error with a single well-directed thrust of the Ithuriel spear of truth. Thus he leads the minds of others along lines his own has traveled, to conclusions he himself has reached.

The leadership of lawyers in public meetings, where opinions and policies are formulated, and whence they are projected upon the general public, is usually cheerfully accorded, though unsought. It is seldom immodestly and never impudently assumed. In the social circle, in the club room, in the private conference, as well as in the public gathering, the lawyer leaves his impress upon public opinion while in the formative state, and gives direction to it when sufficiently matured to express itself in public action. Behind the scenes, if he enter there, where plots in politics are matured, where "coups" in stocks are organized, and where booms in real estate are incubated, his influence is an appreciable factor.

If these statements be even approximately correct, the proposition that lawyers are the trustees of public opinion, in an important sense, is tenable, and the corresponding responsibility must necessarily attach.

An honest lawver clearly perceives, in a political contest, where legitimate criticism upon the personal character and public acts of one seeking or holding office degenerates into personal abuse or slander or Trained in the interpretation and assertion of the principles of right and justice, which constitute the science of the law, he easily and correctly defines the line which separates between legitimate transactions in business and unscrupulous speculation and schemes, verging upon criminal conspiracies promoted by concerted misrepresentations, and which result in fleecing the ignorant and incautious. His impulses impel him always to advocate the right and expose the wrong. quently, however, motives of interest-sometimes direct, oftener indirect—silence him, when a word might prevent injustice and injury. However atrocious a political slander, or however nearly a business scheme may verge upon a criminal conspiracy, he sometimes hesitates to voluntarily expose the one or to antagonize the other, especially if parties directly interested in them command influence and patronage by reason of their personal standing or political or business connections. To determine when voluntarily to expose a scheme likely to deceive the too sanguine to their injury, for the results of which one does not feel directly responsible, however clearly he may foresee them, is a delicate exercise of discretion. In deciding such a question, too great deference should not be paid to considerations of policy. It is not too much to say that the lawyer who fails to actively exert his influence, wherever he touches society—whether in the discharge of his professional duties at the bar, or in the counsel chamber, or in public assemblies, or in private conferences—who fails, by every means he

judges to be effective, to give such tone to public sentiment, with direct reference to pending questions, as will restrain political zeal within the bounds of truth and justice, and confine business schemes within the limits of common honesty, fails to recognize and to meet his responsibility.

No intelligent observer, who has attended the sittings of the Superior Courts outside the cities, has failed to note that they are veritable schools for the education of the people in matters of public concern. The several panels of jurors, grand and traverse, and the almost entire body of upright and intelligent citizens of the county in attendance upon the organization of the court, and during its sessions, constitute the public, and their opinion is public opinion for all practical They give marked attention to the general charge of the judge, whether in crisp, clear statement he summarizes the penal and other statutes required to be given in charge, and defines sharply the duties of each branch of the court, or lapses into fervid exhortation upon the general duty of enforcing the laws and of preserving public morals, or mounts his hobby—that he has one may be safely assumed and exercises for an hour to the wonderment of his attentive listeners. Ordinarily, at least a respectable number of his hearers regard the judge as little less infallible than the Pope. It may be affirmed, without contempt of court, that His Honor is ordinarily no more infallible than His Holiness. The interest the throng takes in the intellectual combat between well matched adversaries upon the trial of any case of importance, civil or criminal, is intense. Every sally of wit, novel or striking statement, sharp retort, outline history of a statute, and suggested change in the law, is caught up with avidity and repeated and discussed in neighborhood discussions many days after. Every more than ordinarily ingenious or strong argument, especially if it be enlivened by an occasional sparkle of wit, or play of humor, or tinge of brilliancy, or show of enthusiasm, real or feigned, holds the rapt attention of the admiring assembly. Even the local orator, with fine orotund voice, who puts every sury before whom he is permitted to pose, either as retained or volunteer counsel, to the proof of an hour's frothy declamation, is not only tolerated, but is accorded a respectful hearing.

Who of us does not know that in every circuit the pithy sayings of the half-century ago leaders of the bar—as Swift, Kenan, and the elder Underwood of the Cherokee Circuit—have passed into proverbs? They are still recognized as condensations of common sense, not always elegant, but even yet as strikingly applicable to often-recurring contin-

gencies in affairs as if newly coined. They have upon them the clearcut imprint of genius. Some of the judges of our Supreme Court who have passed away had, and some still living have, splendid mental "compresses," and scattered through the Reports are their packed sentences and phrases, which have become aphorisms familiar, not only tothe bar, but to intelligent laymen as well.

These statements, confessedly trite, yet true, illustrate that the bench and bar exert an influence second only to that of the press in moulding public opinion. Almost every question of general interest, during its pendency, passes under review in court-house discussion. It requires no great ingenuity to weave into an argument a discussion of some live-issue, as prohibition, or the power of corporations, or the grasp of monopolies, or the concentration of wealth, or the misfortune of poverty. Such opportunities are not always permitted to pass unimproved by the advocate.

The trial of a defendant indicted for a violation of a prohibition law, or for any crime resulting directly or indirectly from intoxication, affords to the representatives of both the prosecution and the defense an opportunity to ventilate their peculiar views upon a pending issue of vital public importance—or, at least, the views supposed to be favorable to their respective positions in the case—the one to inveigh against the great polypus, intemperance, the other to raise the alarm against the alleged fanaticism that would throttle personal liberty by the enactment of sumptuary laws.

The trial of a case against a railroad company opens the way for a diatribe upon the power of corporations and the danger of accumulations of individual and corporate wealth. In a great variety of causes, the crime of being a rich man may be presented in startling contrast with the alleged virtue of poverty.

One would scarcely suppose that the convict lease question could arise collaterally in the court-room. Yet, recently, in the trial of a convict for the offense of mutiny, the supposed cruelties and inhumanities of the lease system were held up with holy horror on the one hand, and on the other an elaborate defense of the system was essayed. All this, too, entirely impertinent to the issues involved, and outside the record.

It would be well for those who indulge in this sort of performance to inquire whether they are always entirely candid in their zeal, and whether their eloquence, like other gas, is harmless where it has ample room to explode in? Not long since, in an excited multitude in Georgia, dissatisfied with the punishment inflicted upon a desperate criminal

convicted of murder, such expressions as "Let us abolish the courts," "Let us burn down the court-house," "Hereafter we will take the law in our own hands," were rife. Such lawless expressions resembled the echoes of the violent rhetoric of an overheated court house orator. Is it ever prudent, for the sake of success in a present contest, or "to tickle the ears of the groundlings," or to nurse a nascent political boom, to step beyond the limits of the proprieties of debate, and to feed the passions and prejudices of the vicious? There will always be fanatics and fools and all sorts of cranks and disturbers of the peace of society; nor will demagogues, in the pulpit, at the bar and upon the hustings, be wanting to supply them with arguments, to impose upon their ignorance and weaknesses, and inflame their prejudices. The proverbial conservatism of the profession, rightly apprehending its responsibility, will be exerted to restrain and to modify, if not to control.

Seldom, if ever, has there been greater need in this country for the exercise of conservative influences than now. A variety of industries. conflicting interests and different races are asserting, more or less aggressively, their rights and claims of right, and our civilization is becoming more and more complex. It will be generally conceded that, until within a comparatively recent period, a jealous regard for the most untrammeled freedom of the citizen, the largest liberty to contract and the policy of non-interference with the conduct of private business, whether of individuals or firms or corporations, prevailed in Georgia. Practical politicians may delude themselves with the idea that such jealousy still exists and inspires their course. But while they may profess this political creed, their practice has widely departed from it. Practice and theory are as widely separate, in this regard, as some men's business and their religion. Our statute books begin to bristle with statutes affecting the conduct of almost every branch of business and controlling the private conduct of men in all relations of life. But the other day, there was a heated debate in our Legislature over a bill proposing to regulate the sale and purchase of commercial fertilizers, and which, in the opinion of some of the debaters, practically deprived seller and purchaser of the ability to make a binding contract.

A distinguished English writer, Mr. Herbert Spencer, has written upon regulative legislation in the United Kingdom. The drift of what he has written may be briefly indicated as follows: Popular demands are embodied in modified form in regulative statutes. These are advocated and defended by ambitious politicians looking chiefly to their own interests and popularity. They are also supported by the advo-

cacy of a portion of the press, which becomes daily more pronounced. Some journalists, chary of displeasing their readers, drift with the current and add to its rapidity and force. Those who regard the regulative policy as disastrous in its ultimate results are silenced by the apparent hopelessness of any attempt to reason with a people in a state of Practical politicians fail to see the far-reaching political intoxication. consequences of their vielding to popular exactions. Those legislators who, in 1833, voted thirty thousand pounds a year to aid in building school houses in England did not suppose that that step would lead to forced contributions now aggregating six million pounds annually. They did not intend to establish the principle that one man should be responsible for the education of the offspring of another. Those who. in 1834, enacted a law regulating the labor of women and children in certain factories, did not dream that they were taking the initial step that would lead to the inspection and regulation of labor in all producing establishments employing above fifty persons. The politicians, a portion of the press and legislative precedents give momentum to such movements. These influences are pushing regulative legislation, and extending it in divers directions and over diverse objects. It is regulating the hours of employment and dictating the treatment and the wages It is buying and working telegraph lines. Its advocates propose that the State take entire control of railways. exclaim against the shareholders who have been allowed to lay hands upon our great railway communications," and against great manufacturing corporations and firms whose shareholders have been allowed to lay hands upon our great producing agencies, and against land-owners who have been allowed to lay hands upon our agricultural resources! They propose to supply gratuitously food for the minds of children, upon the theory that an intelligent population is essential to the wellbeing of the State. Why not supply also food for their bodies, upon the idea that good bodies as well as good minds are needful to make good citizens? This regulative policy involves an addition to the number of regulative agents-commissions, a growth of officialism and its powers, and the establishment of bureaucracies. These statements of fact and opinion, though in reference to another country, pretty nearly describe the trend of popular demands in some portions of this country, and which is beginning to be felt to some extent in our own State.

Legislatures and courts have discovered a wonderful elasticity in those provisions of our written constitutions conferring and limiting legislative powers. Under the pressure of real or apparent necessity or -of imperative popular demand, this elasticity is made available. In this statement no imputation upon the honesty of legislators or judges is implied. In the glare of intense popular sentiment, the cold letter-of constitutions has a different reading from that which it bears in the steady light of intelligent, conservative public opinion, even to the clear, discriminating judicial eye.

The strong probability is that a quarter of a century ago, the majority of the best legal minds in Georgia would have pronounced against the constitutionality of the statute creating our Railroad Commission, with its arbitrary powers. The same is true of our prohibition laws, forbidding the manufacture and sale of spirituous, malt and vinous liquors (the proposition now is to forbid their transportation, virtually forbidding their use by all classes of citizens). Yet these laws have been sustained by the courts, and there is almost universal acquiescence in their sustaining decisions.

While the *principle* of the Railroad Commission is correct, it is farreaching, and may be extended so far as to destroy the healthful effect of competition, to the injury of various industries and sections of country, as seems likely to be the practical effect of the Inter-State Commerce bill.

While with local option laws and the pending fight against the saloons no just quarrel can be had by one who has a due regard to the morals, the health and good order of communities, yet, is there no danger of pushing the reform to the extent of forcing the moral ideas of the majority upon the minority in their private conduct? The people of the South, in view of the history of this country for the last three decades, need not be warned against the moral guardianship of majorities.

While the education of the masses at public expense, at least to the limit prescribed by our Constitution, is the settled and wise policy of the State, is it wise or just or right to burden the property of cities, counties or the State to the extent of providing high schools, academies, colleges or universities for all classes or any class of the youth of the States? While labor should be amply protected in the enjoyment of its rights against the exactions of capital, has any emergency arisen, or is any likely to occur in the near future, which would justify any interference with the largest freedom to contract? But it is rapidly coming to the point where there is no legislation which any class of voters supposed to hold the balance of political power may not secure, if they intelligently and plausibly unite in demanding it, however un-

justly it may cut against the interests or infringe upon the rights of other classes of citizens, less numerous and less powerful at the polls. tendency is to extremes. Politicians are too often mere weather-vanes. sensitive to the slightest changes in the drift of public opinion. mixed character of our voting population offers great inducements to hobby-riders, fanatics and self-seeking politicians, who would force their selfish and often foolish and oftener unjust measures into statute-books. The ambition of a few legislators "to make a record" by proposing and pushing through radical measures, is fatal to the peace of society and its prosperity. The restless demagogue is a dangerous enemy to the repose necessary to the highest prosperity of the country. As the possibilities for class legislation, and legislation infringing upon the personal freedom and property rights of the citizen, increase, the responsibility of those who infuse the element of conservatism into public Public opinion of to day becomes opinion increases in like measure. the statute law of to-morrow. Without the leaven of conservatism. which it is the peculiar office of the legal profession to infuse into society, a government of the people, by the people and for the people tends towards the government of enthusiasts, led by extremists, and its laws tend to reflect the popular sentiment of fanatics.

If any considerable number of those who, by virtue of their intelligence and life study of the principles and philosophy of government, and of the spirit of the laws, may be the leaders of public opinion, and who should be the conservators of human rights, whether of person or property, abandon their trust and ignore their responsibility, the rights of minorities will be endangered. And yet, worse must it be, should they become the high priests of passion and prejudice and intolerance.

The maxims of the common law—the crystalizations of the wisdom of centuries, which have stood the tests of time and are embalmed in the decisions of the sages of the law, are the premises from which lawyers begin their reasonings. In the aggregate of the decisions of the fathers of our jurisprudence may be found a comprehensive chart which clearly defines the rights of a free people—rights of individual freedom and private property. To the professional mind, not blinded by ambition or avarice, it seems to be the sheerest folly to make those solemn sanctions subject to the impulses of the restless and lawless members of society or the extreme notions of fanatical reformers. Where vast and vital interests are concerned is it well to destroy the chart, which marks with precision the dangerous reefs and the safe channels, and trust to the passion, or prejudice, or enthusiasm of the hour, for a safe voyage?

This chart which the law has laid down has been of slow growth—proof that it is well considered, and trustworthy. The impulses of overwrought popular sentiment are capricious and short-sighted. It has been well said that to be governed by such impulses is something like steering an ocean steamship by the theromometer instead of the compass.

The foregoing has not been written in a spirit of hostility to government interference so far as it has been extended in Georgia. Most of our statutory restrictions and regulations have subserved the aggregate public good. But are not the tendencies to a too free employment of the government prerogative? And is not its too liberal exercise the more dangerous from the peculiar composition of society in Georgia? Proposed legislation which fails of enactment is often as significant of the tendencies of public opinion as are the laws which are enacted. Every statute which touches the practices or business of the whole people or of any considerable class of the people is an evolution of public sentiment.

There is, in the Bill of Rights which prefaces our State Constitution, this declaration: "The social status of the citizen shall never be the subject of legislation." Is it not necessarily and manifestly true that the social relations of the people must wholly depend upon the consent of the parties interested (not of one party only), and will not that choice be controlled in large degree by public opinion? Is not legislation which seeks indirectly to control these relations, while not falling directly under the constitutional inhibition, likely to prove mischievous? Increased vigilance and increased zeal for the preservation of right public opinion upon social and economic questions, is the peculiar demand of the times.

If, as has been assumed, lawyers are, in an important sense, "trustees of public opinion," and largely responsible for it, can any portion of the profession afford to be indifferent or inactive? Shall: their sense of security lull them into apathy and indifference, or shall their forecast of danger unnerve or paralyze their efforts to guide the rising flood of social and economic questions? A few there may be who, regardless of the public good, would mount the crest of any wave of passion, or prejudice, or fanaticism, to be borne into office upon it. Such ambitious demagogues, if such there be, who with feigned words would make merchandise of unreasoning passion, or unjust prejudice, or false philanthropy, are traitors to their trust.

It cannot be doubted that the great body of the profession will always be found aligned upon the side of morality, order, justice and right, and that their influence will be actively exerted in moulding public opinion in behalf of these interests. Can there be nobler and finer service to the public?

"In this and like communities public sentiment is everything. With public sentiment, nothing can fail; without it, nothing can succeed. Consequently, he who moulds public sentiment goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible to be executed."

## THE UNCERTAINTY OF THE LAW.

#### AN ADDRESS

DELIVERED BEFORK

### THE GEORGIA BAR ASSOCIATION.

AUGUST 3RD, 1887.

By HON. THOS. M. COOLEY, LL. D.

All nations have their proverbs concerning the uncertainty of the law; proverbs that are supposed to be pithy expressions of what is common thought among the people.

Dramatists and other authors weave these into their productions, and they pass in new forms from age to age. One of them reminds us of what is quite too true, that law

"--- is past depth
To those that without heed do plunge into it;"

and another, with equal truth, that suitors are

"—catched, unknotted, law-like nets
In which, when once they are embrangled,
The more they stir the more they 're tangled."

Most often they relate to the administration of the law, as when "Crowner's quest law" is ridiculed, and when it is said that even Omniscience cannot foretell the verdict of a petty jury; or, as it is set to rhyme in Hudibras,

"Do not your juries give their verdict
As if they felt the cause, not heard it,
And as they please make matter of fact
Run all on one side, as they're packed'?"

Sometimes the uncertainty becomes a jocose certainty, as where justice is depicted as swallowing the oyster and giving a shell to each

of the litigants; or a certainty of a more serious character, as when the daw is said to

and to be always found

"Still for the strong too weak, the weak too strong."

If Justice Story had not spoken in extravagant terms concerning the difficulty of mastering the law, its uncertainty may well be excused, for he has said of it that "The law is a science of such vast extent and intricacy, of such severe logic and nice dependencies, that it has always tasked the highest minds to reach even its ordinary boundaries."

But this I must be permitted to call a rhetorical exaggeration rather than a plain statement of facts, for if it were otherwise, the citizens of a free country in which the administration of justice is very largely in the hands of laymen, might very properly speak with derision of "Old Father Antic"—the law—and think the judicial settlement of mutual accounts by weighing one account book against the other, to be quite worthy of being made part of a system which, though established for the government of the every-day conduct and business of the people, is nevertheless impossible of comprehension by the most of them, and only imperfectly known to the few.

It is probably not often that any person deliberately asks himself the question whether there is any substantial foundation for the reproaches thus heaped upon the law. The general public takes it for granted that they are at least to some extent deserved, and even lawyers and judges do not hesitate to give color to the imputation by making the uncertainty of the law a theme for jokes and raillery.

I shall affirm and endeavor to show by this paper that there is no substantial foundation whatever for these reproaches, these gibes and jeers. It is not true in any sense that the law is uncertain; it is in fact so far from being true that, on the contrary, the law will be found on investigation to have more of the elements of certainty about it, and to be more worthy of trust than anything else, even in physical nature, or in the realm of mind or of morals, that concerns to the same extent the every-day life of mankind.

I shall not delay at this time to make comparison of the law as to certainty with the expected events in the material world, which, though they are counted on to take place in regular order, are nevertheless presenting to our eyes an endless succession of unlooked for phases, so that it may justly be said, it is the unexpected that happens. and winter come and go, but each differs from the corresponding seasons which preceded it in important particulars which give it a character of its own. Science endeavors to foretell storms and calms heat and cold, but we seldom fail of reminder that the wind bloweth where it listeth, and man cannot tell whence it cometh or whither it goeth: the expected breeze becomes a tornado or a cyclone, and the earthquake, without being expected at all, may suddenly, with no premonition, shake a continent and devastate innumerable hones. As a prophet of natural phenomera, science has mastery in a narrow field; a few things it may determine with absolute certainty; such, on the one hand, as the motions of the planets, and on the other the constituents of certain substances, the predisposing causes to certain diseases, etc.; but when scientific knowledge is to be put to practical use, we soon find ourselves, even as to such matters, launched upon a sea of speculation where theory antagonizes theory, and where the most ignorant, if his assurance is ample, is as likely to secure an abundant following as the most learned and competent. Nor is the following necessarily confined to the ignorant; the most absurd and preposterous assertions in psychology have seemed to find converts as readily among grave senators and in the learned professions as anywhere. We may all smile at the colored preacher who demonstrates from the Bible that it is the sun, not the earth, that moves; but in any accidental gathering of intelligent people, there will be found a large percentage who would not dare enter upon any new undertaking on Friday, or sit down at table with thirteen for company, or, if they were agriculturists, to plant their root crops except in a particular quarter of the moon; and each one would defend his position upon the results of observation and experience. The general fact is that we discover by observation what we were predisposed to look for; and in the world of matter, new investigations are perpetually confounding those which preceded them. lawyer still quotes Littleton's Tenures and Coke's Institutes as authority, but there is not a contemporaneous book on the natural history of plants or of animals, or on physics, that has so well stood the test of time, or that is now regarded with the same respect, or is appealed to as a guide with like confidence. And what is here said is as true in the world of mind as in that of matter. In theology, where, if anywhere, it would seem there ought to be indisputable truths, we find that the certainties of one sect are likely to be manifest absurdities to all others, and the sect which anchors itself to an unchangeable creed in one century, drags the anchor so far away in the next that scarcely are even the headlands of its old moorings discernible in the dim distance.

But enumeration here might be endless, and in fact is of but little moment. We perceive that uncertainty is all about us; as to life and health; as to social and family relations; as to business arrangements and anticipations. The seed time and harvest we are told shall never fail; and they come indeed with more or less of regularity, but they often come with unexpected and disappointing accompaniments, so that the promise, though fulfilled to the letter, falls far short of making good the anticipation. In short, in whatever direction we turn, we readily perceive that the law, as regards certainty, is not likely to suffer by being brought into comparison with the phenomena, either material or mental, which are all about us and which, to a large extent, control our every day life.

What is law? If we call for definition it will be readily given, and we shall be told that, taken collectively, it embraces the rules of action-formulated by some sovereign expression of State will, whereby the rights of citizens are established, and their privileges and duties defined and prescribed. This is a narrow and technical definition, but it will-answer our immediate purpose.

The Commonwealth of Georgia became a State of the American Union as one of the original thirteen. Its people formed for themselves a constitution while the war of independence was in progress, and in the subsequent adoption of the Federal Constitution they were left to the control of their own laws in nearly all that concerned the property rights of citizens, their domestic relations, their duties to the State and their relative duties to each other. They accepted the common law with modifications suited to their circumstances; and from that time to the present, law, Federal and State, with multiform commands and inhibitions, has been at all times over, about and upon the people, and no citizen of Georgia has for a moment been at liberty to act in disregard of its restraints, or otherwise than as the law permitted.

We all recognize the fact that human society can have only a precarious existence without law; if it could begin without law, it must of necessity at once become a prey to disorder and violence, until the rule of the strongest should be established. If instead of no law at all, there was law which was uncertain in its commands and restraints, this might in a degree be better than no law; but the uncertainty must necessarily tend to invite disorder and breed conflicts, and so long as that should be the case, it would be quite impossible that there should exist that condition of confident security and peace in which alone can general content prevail.

One method of determining whether the law is reasonably certain may, therefore, be to inquire into the general condition of the political and social state. Let us, then, ask how it has been with the people of Georgia since the State became a member of the American Union? Has there been general order, content and peace, such as may be expected to result from established and well understood law, or has the general condition been one of disorder and violence, in which the people took the law into their own hands, because the prescribed rules were of such doubtful import that legal protections were untrustworthy? If the people in their various political, family, individual and commercial relations have been doubtful of their rights, and, as a consequence. have been disquieted and inclined to look to violence as a means of redressing wrongs, because protection by public authority was thought to be uncertain, the law may very justly be charged with the responsibility. But if, on the other hand, general peace and content have seemed to prevail, if the people have commonly been in the undisturbed possession of political and civil rights which they have been suffered to enjoy without dispute or contention, as being unquestionably theirs according to the civil order established for the State, the groundlessness of complaints of the law, based on its supposed uncertainty, would seem to be established beyond question.

Directing our attention, then, to the political relations of the people as they have been established by State and Federal Constitutions, we find it very clear that as to these the law can be charged with no vagueness and no ambiguity. These charters of government, in prescribing the rights, duties and obligations of citizens, have done so with clearness and precision, and in like plain terms have fixed the bounds of governmental authority. Questions respecting these have arisen but seldom, and when they have arisen, they have been disposed of in orderly manner and by constitutional methods. Every citizen has known when and under what conditions he was entitled to exercise the elective franchise, or to take upon himself any public office, and he has also known what conduct on his part would be regarded as violative of the public order. It would probably not be within the capabilities of human language to make more plain and distinct the rights and duties of citizens than they have been made in organizing and

putting into operation the State and Federal governments. We may justifiably use the legal phrase employed in pleading, and say that they were made "certain to a certain intent in every particular."

It will, perhaps, be said in opposition to this, that there has been from the first a great question, which in time became vital, whether the relations between the State and the Federal government might not be severed at will—the severance terminating personal allegiance. But if we concede that this was an open question, the concession will scarcely at all qualify the broad general statement which has just been made; for a right to put an end to the Union would not in any degree, before it had been exercised, render the public law uncertain, or affect in any particular the rights and privileges of citizens or their duties. While the Union remains, its constitution and laws must govern.

It may also be said that as to the Federal Constitution there have been, from the first, opposing schools of construction; the one emphasizing national, and the other state sovereignty; and that the Constitution has been made to express different thoughts and to speak in a different sense, according as the one school or the other had been in position to make authoritative application of its provisions. perhaps, a common belief to this effect; and we must admit that a power to construe a charter of government, if unlimited, is of tremendous force, and may almost be equivalent to a power to make a new But as regards the Federal Constitution, the effect of construction in rendering it uncertain has been very much less than is commonly supposed. The party of state rights, when in power, has never failed to find the grants to the Federal government adequate to all its necessities, and it cannot be justly said that the powers of national sovereignty, as they were employed by Jefferson or Jackson, were at all inferior to what they were as claimed and exercised by Jefferson's Federal predecessors. In the field occupied by the judiciary, it might be expected to be otherwise. The great Federal Chief Justice who, with such extraordinary skill and acumen, had for thirty-four years, in his judicial decisions, made the Constitution speak the thoughts and utter the sentiments of his school, was then succeeded by a distinguished leader of the opposite school, who was scarcely his inferior either in ability or determination. But if any persons expected, as a result of the change, any considerable divergence in the trend of judicial thought and in the current of decision, they were doomed to disappointment. For twenty-eight years Chief Justice Taney sat as the accepted oracle of Federal law, but keeping all the time close to the line of authority, and citing, as conclusive on controverted points, not only the decisions of Marshall but the reasoning on which those decisions were founded. And when Taney passed away, there succeeded him another eminent jurist who trod carefully in the same footsteps, so that if to-day uncertainty in the law is to be encountered anywhere, it is not to be found in what pertains to Federal authority.

Upon this point we may not, perhaps, expect entire concurrence of A belief prevails in many quarters that since the civil war the judicial power of the country has been in the hands of those who were inclined to expand the Federal authority by construction, and to restrict and belittle the rights of the States. The belief has very little basis beyond the suspicions springing from former political affiliations of the judges: and when the record of judicial action is examined, we must look with sharp eves if fault-finding is our purpose. While the court has most emphatically affirmed and re-affirmed that the Union formed under the Constitution was an indissoluble Union of indestructible States, it has also, whenever occasion called for it, upheld the rights of the States in the plainest terms, and protected them with plenary The Milligan case, the Slaughter House case, and the Civil Rights case, are ample proof of what is here asserted, and he must be blind indeed whose prejudices will not permit him to see it. change in the political complexion of the court would, in this particular, work no essential change in the law.

Upon one branch of Federal law, however, we shall have little to say of certainty. When the Federal court, in the Dartmouth College case, solemnly affirmed that some laws are contracts, it entered a field where doubt and hesitation must necessarily attend every subsequent The consequence has been to keep the court busy ever since, distinguishing, qualifying and explaining. If the charter of a college is a contract, it would seem that almost any other law might be thought one; and though the court undertook to limit its ruling by exclusion, there was in the nature of things such ample margin for the exercise of judicial reason as new cases arose, that it may fairly be said the country has never known how far the States had power to control their own legislation. The first decision of the court was a surprise, and some of the most important judgments since have been the most unexpected. But strange as is the medley of cases, all is not confusion, and the States have made such ample provision for excluding the idea of contract in statutes, that we have now little occasion to qualify the general propositions we have advanced.

If we direct our attention to the domain of criminal law, we shall. not find there the uncertainty we are in search of. The State and national constitutions, and the statutes passed under them, taken in connection with the well understood common law, have made plain to the apprehension of the people what conduct on their part is forbidden as an offense against the sovereignty or to the public order and security. No man inclined to seize upon a public office to which he has not been chosen, or to inflict violence upon a neighbor, or secretly to make way with the property of another, or without authority to sign another's name to a bill or a bond, would have the assurance, after he had given rein to his criminal inclination and been brought to judgment for it, to set up the pretence that the law was so uncertain in its commands that he was not aware any legal wrong was being committed. know the pretence could deceive no one. By common consent we agree that ignorance of the law will not excuse; but the legal maxim to this effect is not more necessary than it is just; for in so far as the law prescribes public and relative duties, there can very seldom be any excuse for ignorance.

If we turn now to the family relations, we may pertinently inquire, has any one been in doubt as to how under the law he might form the relation of marriage; or, if he formed it, as to the obligations it imposed upon him; what would be the legal term of its continuance, and by what events it might be dissolved? Has any one ever heard of a family council being called to consider these subjects when it was found that young people were contemplating matrimony; and if so, has the basis of the call been an assumption that the law governing the domestic relations was so far in doubt and unknown, that the parties concerned were perplexed over the question what would be the legal consequence of the proposed union? Such questions require no answer at our hands to-day; they are answered in every man's mind as soon as stated. The most ignorant person in the community, if endowed with natural reason, knows almost as well as the most learned what are the leading rules which govern the domestic relations; and no Justice Shallow who, by chance or by the contemptuous good nature of his fellow-citizens, becomes clothed with temporary authority, is so stupid as to be likely to fall into serious error in enforcing these rules against offenders. Here, however, as elsewhere, cases may arise upon peculiar facts which may puzzle not the unlearned merely, but the learned as well; but an occasional anomalous case can no more be said to make the law uncertain, and to preclude a general condition of order and security, than theall of an occasional aërolite can be said to make life unsafe and threaten a general destruction. It is the general fact which constitutes the test whereby we determine when there is occasion for uneasiness; not the strange and peculiar event which, like the fatal stroke of lightning, is so rare that only the timid or the foolish discuss or fear it.

Would we inquire whether the law which governs commercial transactions is subject to the charge of uncertainty, we might find it useful to visit one of the leading banks of the city, and study its operations for A thousand or more distinct transactions take place before our eves: money is received and paid out, notes discounted and bills drawn; and the legal validity of nearly every transaction is seen to depend upon the form of written instruments, the sufficiency of powers. the precise time when an act is done, and the person whom the law indicates as the one who must be the actor. There is a legal rule for every case; many of the rules seem to be technical, but they are imperative; exact compliance is requisite, and the perils of non-compliance are often very great. But if we were to begin our observations with preconceived notions that the law governing banking operations was difficult to understand and uncertain, we should probably be astonished by the clock-like regularity of all transactions, and by the evident rarity of occasions when the cashier or other officer would deem it necessary to delay until he could take legal counsel. In a year's business, the plain cases, as compared to those upon which doubts arise, would probably be many thousand to one, and the doubtful cases would commonly be found to be so on facts rather than on law. So far, therefore, is the law which governs banking operations from being dubious or vague, that it seems almost a marvel of precision and clearness. The banker understands it thoroughly, and his customer, except perhaps as to some niceties which are easily explained, understands it equally well, and submits himself without question to its protection.

If we turn our attention to the stock-boards of the country, we shall fail quite as signally in our search for the law's uncertainty. Every day on the stock-boards of New York millions of dollars in money and securities change hands, in confident reliance upon legal rules which are assumed to be so certain and so well understood that no one anticipates any question to arise concerning them. It is rare indeed that this confidence proves unfounded; and when it does, it is likely to be because the operator engaged in some transaction which in itself was questionable, or because the controlling facts were peculiar and misleading. And what is said of the stock-boards of New York is equally true

of the grain, provision, cotton and tobacco markets in the great commercial centres of those staples respectively. As we enter the room when the open board is in session, and hear the deafening cries and witness the wild gesticulations, we seem to behold a bedlam let loose; but we soon perceive that everything is done in most undoubting reliance upon the law, and that dealers, in the large transactions into which they venture, are daily and hourly showing a confidence which would be madness if it were not well grounded. People may criticise a dealer's ventures as being based on erroneous calculations regarding the money market, or the probable crops, or the influences likely to affect the price of the commodity in which he deals; but unless he engages in transactions which are questionable on grounds of morality or public policy, a criticism because he relies upon the law to give him protection in his dealings will be a thing unknown.

Nothing pertaining to property can be of greater importance to us than that the titles to our homesteads and other lands shall be unques-These titles are supposed to appear by the books of records which the State provides for. Certain rules are prescribed, in part by the common law and in part by statute, as to the forms of conveyances and as to formalities of execution; and the recorder is expected to see that the instruments he is asked to place upon his records conform to these requirements. In our simple way of doing business, the great majority of conveyances are drafted by men not bred to the law, and are certified by officers who are chosen for other duties, and who are not required to have legal training or any special knowledge of legal It would not be surprising if, under such circumstances, errors were frequent, or if numerous estates should be put in peril as a consequence of the scrivener's mistakes of law. But the reverse of this is The proportion of fatal errors in conveyances found to be the fact. arising from misconception of the law, as compared with the whole number prepared by unskilled hands, is surprisingly small, and gives most conclusive proof, not only that the law regulating conveyances is well understood, but that it is in itself so plain and so certain, that no man, learned or unlearned, if he have prudence, need err therein. examination of records and the tracing of titles therefrom we know to be a matter of some nicety; but whoever makes it his business very soon comes to understand that the troublesome questions likely to confront him are not, in general, questions of law. There may be false personation in a conveyance; a grantor who conveys as a single man may have a wife who some day as a widow may be entitled to dower; he

may make a deed while yet an infant, or while insane and under guardianship, or as sole heir when there are others who ought to unite in it with him; landmarks may be mistaken, and there may, in the case of a single title, be many occasions for pausing in the examination of records until extraneous facts can be inquired into, but it will be very rare that there will be need to resort to the books of law; and when there is, it will be likely to arise from statutory changes regarding the formalities of execution, rendering different forms requisite at different periods.

If we judge by the common speech of men, we shall perhaps conclude that the uncertainty of the law is most apparent when the estates of deceased persons come to be judicially settled up. If an estate is large, a will changing to any considerable extent the statutory course of distribution seems almost certain to be contested, and with such surprising result in some cases that we feel inclined to assent to the common remark, that whether a man has capacity to make a will can never be known until a jury has passed upon it. The evil here is so great and so manifest that in some States it has been seriously proposed to obviate it by allowing wills to be probated in the maker's lifetime; thus advancing the quarrel over the estate, and giving the testator the opportunity of taking a part in it. The remedy will probably add to the disease instead of curing it. But we must all admit that the disease as it now exists is of no small magnitude, and that such uncertainty as the administration of the law is now subject to is as painfully apparent, and perhaps more so, in cases of this sort than in any others. Nor is it difficult to perceive that there are reasons why this should be so. One of these is that it is in the making of their wills that people are most likely to experiment with the law, and to make doubtful ventures. The man who sits down to prepare his will is then brought face to face with the fact that he must part with his estate; the accumulations of a lifetime are to pass But it is not pleasant to contemplate the fact that the away from him. control over one's own, which has hitherto been absolute, must cease; the love of dominion may still be strong, and the owner of lands and. other properties to which he is attached and for which he has had plans for the future, may not unnaturally desire to extend his dominion, even after he has himself passed away, and to bind his successors in the estate to his own plans and wishes. This passion for perpetuating dominion leads to many unreasonable and strange dispositions of property; to attempts to create perpetuities, to build up vast accumulations, and in other ways to countervail the policy of the law while keeping within the letter of it. It is not surprising that the attempts sometimes fail, and

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that the ingenuity expended in circumventing public policy in testamentary dispositions misleads the draftsman himself into blunders, so that it sometimes happens that the wills of lawyers of distinguished ability, drawn by themselves, are found to contain illegal clauses. But it is very far from being a reproach to the law that when attempts are made to dispose of property in unusual and strange ways, instead of the customary methods which harmonize alike with the general law and with the natural affections, they sometimes fail of their object. In most cases they probably ought to fail, because the statutes of descents and distributions will dispose of the property more wisely and more for the advantage of all concerned.

Again, as accounting in a measure for the unsatisfactory state of the law as administered in the settlement of estates, it is to be said that it is in these cases more particularly than in any others that the parties are tempted to engage in litigation on a mere chance that in some way not clearly perceived they may succeed in what they desire. Somebody has expressed in rhyme the common thought that

"—there never was pitcher that wouldn't spill, And there's always a flaw in a donkey's will."

But everybody is entitled to this contemptuous designation whose testamentary dispositions we do not approve, and one who takes nothing under a will may very naturally be expected to embrace the chance of a flaw being discovered, even though he may have no suspicion of the clause in which it lies concealed. But contests are also invited by the further fact that it is customary to allow the costs of the contention to be paid out of the estate. This in effect compels the winning party to pay them; a most vicious custom, and one to which, in the States where it prevails, a large proportion of the contests over wills is fairly attributable. The allowances made when great estates are involved are sometimes so enormous that the most honest lawyer needs to be on his guard lest he be misled by his interest into errors of judgment, and it is not to be doubted that some, less scrupulous, with the tempting bribes before them, shut their eyes to truth and justice, and do not hesitate to encourage litigation so long as there is anything to contend for, or to prolong it to the extent of their ability. It is not surprising that the common sense of the people has crystallized into proverbs for such "The half is better than the whole" it is said: "an ill agreement is better than a good judgment," the thought in each case being that it is better to accept a part when it can be had by consent and in

amity, than, at the end of litigation, to recover judgment for all that is claimed. And another saying is particularly applicable to family litigation over estates: "The worst of law is that one suit breeds twenty."

But in testamentary cases, as in all others which so far have been spoken of the grounds of contention are commonly found in the fact, not in the law; and the uncertainty concerns not so much the legal rules, as the way the witnesses will give the facts to the jury, or the view the jury can be induced to take of them. In the great majority of cases, if the parties should agree upon the facts and submit their agreement for judgment, the uncertainty would be found to be eliminated altogether, and judgment would be passed without hesitation. encouragement to litigation is therefore found in this: that each party expects, or hopes, to impress his own view of the facts upon the tribunal that is to pass upon them; the law of the case being uncertain only because uncertainty as to the view that will be taken of the facts makes But an uncertainty of this sort is in no proper sense an uncertainty in the law; no amendment by way of perfecting the law could possibly remove it; it is inherent in human transactions, and will be so long as human beings are finite in understanding and imperfect in moral nature

But even in the settlement of decedent estates, if we look into the proceedings of the various courts having jurisdiction of them, we shall probably find that the great majority are gone through with and closed, not only without litigation, but without invoking legal assistance. This would not be possible if the rules of law governing them were otherwise than simple, reliable and certain. The judge of the court, whatever he may be called—ordinary, surrogate, judge of probate, or what not—it will be found commonly takes supervision of the proceedings, but he seldom has occasion to do more, and the settlement is effected with as little question about the law governing it as would be the monthly settlement which a man makes with his grocer or his tailor.

How thoughtless, then, how baseless and unwarranted are all statements, utterances or insinuations, from whatever source coming or in whatever form, which imply that the law, spoken of collectively, is uncertain and untrustworthy; the law which constitutes the strength of civil society, the support of the State, the establishment and security of order; which protects our persons, our families, our possessions, and is yet so unobtrusive in its protection and in the security it gives, that we resign ourselves to its care without taking thought why we should do so, and scarcely become conscious of the extent of our indebtedness

to it unless, by its value being challenged, we are brought to consider and reflect upon its inestimable worth. We may then be made to see that order, protection and security are about us at all times, because the law is everywhere, and because it prescribes in no doubtful terms what shall be our rights and privileges, and what, in association with others, are our relative duties. But even then we shall appreciate the worth of law but imperfectly, since we cannot by any effort of the imagination fully realize what would be the condition of things with either no law at all, or only such law as was of doubtful import.

Having said this much concerning law in the abstract, and concerning its silent and unobtrusive benefactions, we shall not shrink from a consideration of the law as it manifests itself in its administration. Here we shall admit, as indeed we have done already, that doubts, difficulties and uncertainties come in, and that sometimes the instrumentalities of the law become the subject of just reproach. follow, however, that the law itself is subject to reproach. certain, positive and clear the law may be, it must of necessity, for administration, be committed to agencies and subjected to influences that lack all these qualities, and are at once unmanageable and doubt-The law has then to deal with uncertain facts, with untrustworthy or mistaken witnesses, with obscure or false documents, with ignorant or prejudiced jurors, with fallible judges; in short, the law for construction and application is then delivered over to fallible human beings, sometimes under circumstances when it would seem that nothing short of Supreme Wisdom could possibly determine what ought to be the proper conclusion. That doubts and uncertainties shall intervene is inevitable; to complain that the results are not always what they should be is to find fault with the plan of creation. Perfect results are obviously not obtainable in the use of imperfect instruments.

There is precisely the same difficulty in reaching the exact facts in any field of human investigation. Ten Grecian cities, it is said, contended for the honor of being the birthplace of Homer; but to day learned men are not agreed that such a man as Homer ever lived, and we may at pleasure take sides on the question with plenty of respectable support, whichever side we may choose. The old Hebrew prophet put the case of extreme improbability when he inquired whether the mother may forget her sucking child. But the memory not infrequently plays traitor even in the tenderest relations, as was made painfully evident in the case of the false heir to the Tichborne estate, in support of whose fraud the mother of the real Tichborne was chief witness. If

the law of the case had been no more trustworthy than the mother's memory, one of the boldest of frauds, which was at the same time one of the baldest, might have been crowned with a success commensurate to the audacity which planned and conducted it.

In seeking the truth concerning human transactions, the senses are likely to be relied upon as the most trustworthy of witnesses; and we think ourselves fortunate when we have their direct and positive evidence upon a point under investigation. But the senses are playing us tricks continually; with a little aid from the imagination they betray us into innumerable follies and blunders. A glint of moonlight becomes an apparition: the hooting of the owl may be an Indian war whoop exciting us to terror; no two of us can see exactly the same thing in a street brawl and hear exactly the same words in a contention. The false report of the senses has before now sent many a man to the prison or to the gallows. If they were perfectly trustworthy, no phenomena would be better proved than witchcraft or the revisiting of the earth by departed spirits. But on these subjects we have come not merely to distrust the senses, but to pronounce them falsifiers, and relying upon the counter-testimony of reason, we reject what they tell us as being obviously the product of delusion. With our ancestors it was otherwise; they trusted to their senses, and were led thereby to commit many atrocities. Misled as to the facts, they perverted and misapplied the law. It was so long before their time: the law said the birthright belonged to Esau, but the deceived senses awarded it to Iacob.

Is it true that the law favors the strong and fails to protect the weak? If it does so, the fault is beyond palliation or excuse, for the weak require the protection of the law in many cases when the strong can protect themselves, and it ought to be the special duty of government to see that the protection is given. But here again, if there is just cause for reproach, it must concern the administration of the law; not the law itself. In its principles the law is no respecter of persons, but in its administration we agree that wealth has many advantages. It can employ the most able counsel; it can more surely gather in its witnesses; it can avail itself of various ways of influencing and controlling public sentiment. But poverty has important advantages also. The natural inclination of the mind and heart of the community is to take sides with the weaker party; and this is sometimes worth far more to a litigant than anything the most able advocate may say. It is often carelessly assumed that a great corporation has some peculiar advantages in the courts; but the assumption has very little basis.

state of facts, a farmer sued for injury caused by the negligent act of his laborer, would be much less likely to be punished in damages than would a great railway company. The farmer would be judged by his peers and without bias; but the railway company cannot have its peers on the jury, and it will be more than usually fortunate if it does not have among its triers some who habitually look upon it as a creature standing apart from human nature; soulless, heartless, grasping; an arrogant representative of monopolizing wealth. However fair such triers may intend to be, the bias must insensibly, to some extent, affect the judgment.

Nor with the abundant evidence recently given, that the greatest wealth may be powerless to protect the bribe giver or the robber of the public treasury from ignominious punishment, are we likely to attach very much importance to the common complaint that the law is but a cobweb net, which catches the small flies only. The law is ample for all cases, if those who are to administer it determine to make it so; and the inducement to that determination may sometimes be found in the very prominence of the offender, whether that prominence be due to wealth, or family, or high station. Many such a man has had reason to regret that the large space he filled in the public eye aroused so great a public interest in his conviction and punishment. And how utter has been the collapse of such persons, and what pitiable objects they have become when the law has at last laid heavy hand upon them!

Time will not allow of my going further into particulars in support of my thesis. Nor is it needful. The law, as a body of rules, is not subject to just reproach, and we can all see, if we will, that difficulties which attend its administration are not greater than those we encounter everywhere else, nor essentially different in kind. We trust the law with almost unlimited confidence, and it is altogether reasonable that we should do so, for the law gives to us severally and collectively a protection and security otherwise unattainable, and makes us as a whole a contented and happy people.

The law of this country ought to be peculiarly efficient in its protection, for it speaks with special force and majesty because of its being the expression, not of one ruler, or of one ruling class, or of some temporary governing body, but of the whole sovereign people, speaking deliberately and in most solemn form. History has many grand and noble examples of people rising in their might to throw off the yoke of a tyrant, or to crush an invader, or to break the chains of priestly des-

potism, but it calls us to no more inspiring or majestic sight than that of a people who, while cultivating the arts of peace and keeping active the wheels of industry, calmly, at the same time, and without display or ostentation, are perfecting a noble system of law. In the exercise of the highest attribute of sovereignty, the American people have been quiet and undemonstrative, and their best work has been done when least conscious of it. This best work has consisted in the preservation and perfection of the common law. Mackintosh justly said of that system of law that it "has been chiefly formed out of the simplest principles of natural justice, by a long series of judicial decisions," but to every leading principle we may apply the words of Milton, that it is "an unwritten law of common right, so engraven in the hearts of our ancestors, and by them so constantly enjoyed and claimed as that it needed not enrolling." A law thus made speaks the best thoughts of the people; it is better than could be made by the wisest single lawgiver, for the plain reason that "everybody is cleverer than anybody;" the whole know better what is suited to their condition and needs than anyone can And when laws are thus popularly made and long acted upon we may justly expect them to have habitual and spontaneous obedience, except from those who are purposely vicious. It is true that the common law has required much enlargement; new conditions have called for new rules, but the new rules have been grounded in old principles, and the legislation which prescribes them has, therefore, disturbed but slightly the established order. There have been revolutions in many things, but the onflow of the law has been as steady as it has been majestic; as peaceful as it has been resistless.

Preserving their common law, the people of America have also very wisely in the framework of their political institutions preserved whatever of value had been worked out for them in the struggles and vicis-situdes of ancestral history, and have shown a prudent conservatism in accepting changes which would substitute for actual benefits in possession any merely theoretical improvements. Their maxims of liberty are embodied in their constitutions as a protecting armour, and to this protector may aptly be applied the saying that "only link by link is made the coat of mail." Under the hammer and by painful and patient riveting it grows, till it is complete for protection; and in like manner have grown and been perfected our bills of rights until they justly attract the admiration of mankind as the perfect work of centuries.

Nor is it of slight importance that the several State Constitutions are

framed to one model, and bear to each other so strong a family likeness that if any one were to be substituted for another it would introduce no considerable disturbance to the body politic. Their leading principles have all sprung from the same seed, and have had substantially the same worthy culture and the same nourishment. And nothing is more noticeable in American history than the hesitation of the people in admitting constitutional changes. Within the present century there is not a leading country in Europe in which the changes in fundamental law have been so inconsiderable. The same conservatism has attended the ordinary legislation; there have been many changes, but the great body of the law remains nearly the same as it was when the century opened. We cannot doubt that this has been wise. "With customs we do well," says the proverb, "but statutes may undo us;" and our laws we do not forget are still for the most part customary. The power to legislate, the people of America have discovered, unless carefully restrained and limited, is quite likely to prove a "power to frame mischief by a law;" and by their constitutions they give special and careful attention to the necessary restraints. There is no legislative omnipotence in America, nor ever likely to be.

In opening this subject I spoke of the common definition of law as narrow and technical. This I repeat with emphasis now. Law is something more than a collection of rules. Those who expect to find somewhere all the law in black and white, fail to grasp its divine significance. Tongue has never formulated it completely; pen has never fully written it down. Law is expressed in statutes and in decisions, but as the anatomy is not all of the man, so these are not all the law; there is a vital force which is more than the words, and which, if the words were all blotted out, would still hold the units of society together and in order, while the words were being reproduced. And this vital force is inspired and invigorated by kinship to an intelligence that is higher than the State, and above all human arrangements.

Go into any one of your streets and you may meet at any turn some worthy and industrious citizen who from childhood to maturity has been dealing with his fellows, and been brought in contact with men of all sorts, sometimes pleasantly and sometimes not. All the time he has been living in obedient conformity to law, and no one has ever summoned him to judgment for misdoing. But ask him what the law is, and he cannot tell you; he has never heard it defined; he has never been told its rules; he knows that representatives, in whose selection he has a voice, meet at the State capitol to make or change it, but

beyond this he takes no thought or care. How happens it, then, that he has obeyed the law? Perhaps he will tell you that in his dealings with his neighbors he has not thought of law, but has only meant to do what was right: and in saving this he will pay to the law a noble tribute. as he shows its conformity to well doing and right thinking. standards of legal right are not always plain to natural reason; and in striving to do right one might not always conform to them. thinkers differ as to what is right in the acquisition, holding and enjoyment of property, in the making of contracts, and even the rules that should govern the domestic relations. Much of legal right was conventional in its origin; but legal rules long observed create a reason for themselves, and the citizen conforms to them without question as he does to the laws of nature whose operations he perceives about him. He yields as by a sort of instinct to what the law, expressing the common opinion, has settled upon as right, and the law is a master which he follows without seeing, and obeys without waiting for a com-Nor is this all, for in proportion as his own life is conformed to a standard of excellence which is above the existing law, he is doing something to lift the State itself to a higher plane, and to shape the law in due time to the like standard. When the people accept the divine leading, the law will steadily come more and more into conformity to the divine will.

I cannot dismiss this subject at this time without adding the strong affirmation of opinion that the general certainty and security of the law is largely due to the fact that there is, and always in our history has been, a body of educated and intelligent practitioners, charged specially with the duty to expound the law and make it plain, not alone for court and jury, but far more often for clients asking their advice in such matters of doubt as present themselves in trade and business and in family and other relations.

When I affirm that the certainty of the law is largely due to this body of men I speak advisedly, not forgetting that there have always been those who, like Jeremy Bentham, have taken cynical pleasure in charging the profession with deliberately and for mercenary purposes making the law as difficult as possible, that they might thrive upon the doubts. The imputation has very little truth or reason for its basis. Safe improvements in the law nearly always are, and almost of necessity must be, made under the leadership of able lawyers, who by their training and professional experience have come to know what is needed, and have the knowledge requisite to put enactments in proper and safe

form. And such a lawyer is as naturally inclined to improve the law where he perceives the need and the opportunity as a mechanic is to improve the tools of his trade, or the farmer to introduce better methods of agriculture. Nor is it true that the able lawyer finds it to his interest to have the law doubtful and uncertain; his interest on the other hand is to have the value and usefulness of his profession recognized and appreciated, and to this end it is of the highest importance that he should be able to give to those who seek his advice safe and trustworthy counsel. He can do this only when the law itself is trustworthy, and his interest, therefore, as certainly as his pride in his profession and in the law itself will naturally incline him towards a reform in the law whenever the need of reform shall be manifest.

To defend the profession against the reproaches that are heaped upon it, either because of misunderstandings or ill will, or because of the conduct of unworthy members, has not been among the purposes of our gathering on this occasion. But I take satisfaction in believing. and therefore in affirming on all suitable occasions, that the profession as a whole recognizes the unquestionable fact that it exists under the law only because it is supposed to constitute a valuable aid to remedial. justice, and that it best promotes justice by making the law plain to the common apprehension, and by relieving it from technical and abstruse constructions, as well as from applications the equity of which is not apparent to the common mind. There is not a State in the Union whose roll of attorneys does not contain many names of men whose reputations are cherished for such distinguished services at the bar or on the bench as are very well calculated to remind us that in thedomain of peace and in the quiet of every-day life there may be achievements as deserving of renown as any that may be won in the shock of armies. The noble Commonwealth at whose capital we meet may justly take pride in a long list of such men, whose memories are cherished for many public and private virtues; men who, in aspiration. and attainments, have risen above sordid aims into

"---an ampler ether, a diviner air."

To-day let us recall with profound respect their unostentatious laborsin making the law which holds together and preserves society moreplain and certain, not in the abstract merely, but in its ordinary application as a regulator in the domestic, the industrial and the commercialrelations of the people. Brethren of the legal profession, we cherish a noble ambition if, above all mere personal views and desires, we aim to make the world better and our country the greater and nobler for our having lived in it. The aim will be in a large degree accomplished if our labors shall tend to simplify and elevate the law. Without good and trustworthy laws there can be no great and noble State, no settled order, no happy people. And far beyond all other influences, the labors of the legal profession are capable of lifting the State to that enviable condition of a State whose laws give content to the people because they are just, and because the people know and understand and approve, and therefore abide by them.

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# · USURY AS AFFECTING SECURITIES FOR DEBT.

### A PAPER

READ BEFORE

### THE GEORGIA BAR ASSOCIATION,

AUGUST 4TH, 1887,

By R. S. LANIER.

Modern thought, earnest and free as it is, is a foe to prejudice. It investigates all things,—art, science, politics, law, ancient faiths, precedents,—seeking to value each of them at the worth of each. It is as the hammer of Thor, to strike down abuses, and remove obstacles to needed reforms. So the spirit of reform gets abroad in the land. Informed by modern intelligence, stimulated by modern activities, it investigates in order to understand; it questions in order to improve.

Reform, in the sense of securing betterments, is simply a phase of evolution. The improvements which succeeding generations of men make over former ones illustrate the law of moral evolution.

The spirit of modern reform is aggressive, as it should be, for it encounters inveterate enemies. These ancient faiths, precedents and prejudices also are as lions in the path of reform. They are found all along the ages, from the fetishism of the barbarian to the liberalism of the modern free thinker. Even now, in the highways of this boasted age and nation, as well as in the by-ways, they may be observed opposing progress.

There is hardly a matter affecting human transactions that has passed through more phases, excited more prejudice, or been the subject of more unreasoning discussion and legislation, than that of usury. Like the red flag shaken at the "torro," usury was only to be named to stir the average law maker, and sometimes the law expounder, to intemperate action. In the light of modern experience, there ought to

be no misconceptions about it. In the light of the intelligent commerce of the age, there ought to be no superstitions to exaggerate it. The gulf between eight per cent. interest and eight and a quarter per cent. interest ought not to be so deep as to bury, not only the excess, but the whole principal and lawful interest of the lender. Regard for justice and right ought to save something from the clutches of the "insatiate" debtor. Whatever may have been the extortions or abuses under rude laws of ancient peoples, or in mediæval times, or under ecclesiastical or other laws in England, or elsewhere, there ought to be no excuse now for laws which work a forfeiture of the whole debt. Such laws are not in consonance with the spirit of the age. They are opposed to its needs—to a modern sense of what is just between man and man.

Never were trade and commerce so multiform and extensive as now. Never was there a better reason than exists now for encouraging the sentiment of fair dealing in all transactions. The spirit of the times invokes it. Moral principle, the surest basis of all success, demands it. All appeal for some reformatory legislation.

Modern law writers on usury refer to the change in public sentiment concerning usury. It is losing its bad character. The prejudices which perverted it to wrongful ends are yielding to a juster appreciation of the subject.

Mr. Tyler, in his work on Usury, after a graphic tracing of its vicissitudes among the nations, remarks, in the closing chapter on England: "It will be observed that the laws of Great Britain relating to usury gradually became less and less stringent; and some dozen years ago, public opinion had reached a crisis which called for free trade in interest, and accordingly Parliament passed an act repealing all laws then in force upon usury." That seems to have been a great awakening in Great Britain. It was emancipation from servile prepossessions. But no such repeal of our interest law is intended to be asked for here. The rate of interest as now fixed by law is satisfactory.

Under the head of "Usury," in the American Encyclopædia, we find this: "Originally it (usury) meant any taking of money for the use of money; and he was therefore a usurer who, lending money, required in payment anything more than the amount which he lent. This was once considered a great moral wrong; but it is no longer deemed more to take pay for the use of money than for the use of a house, or a horse, or any other property. If compensation be taken within the limitation of the law, it is called interest; but if more be taken than the law

allows, this is the present meaning of usury. The opinion that money should be borrowed and repaid, or bought and sold, upon whatever terms the parties should agree to, like any other property, has, of late years, gained ground almost everywhere; and where usury laws are in force, this opinion has perhaps exerted influence in adjudications."

Such relaxation of the stringency of public opinion on the subject is believed to be true as stated; but this fact does not seem to have exerted much influence on adjudications in Georgia. The argument against the *then* existing usury laws in Massachusetts, in a memorial which went up from citizens of Boston, in 1834, to the Legislature of that State, procured a material modification of those laws, and has flever been fully answered since. No doubt that argument (which cannot be reproduced here) effected ameliorations of the laws elsewhere. In Massachusetts the rate of interest, without contract, is six per cent., but any rate may be agreed on.

As nature, it is said, abhors a vacuum, so the law, in matters of contract, ought to abhor forfeitures. Forfeitures make undeserved vacuums in men's pockets. They are traps of the law which enable one set of men to rob another set—to get something for nothing—and are demoralizing to all parties concerned.

The policy of the law which limits the rate of interest and makes any excess agreed on forfeitable, is not questioned. It is the effect of the law, as applied by the court to securities for payment of the debt, that is deemed to call for correction. For example:

In Broach vs. Smith, executor of Kelly, 75 Ga. R., 159, the court decided: "A conveyance made under section 1969 of the Code to secure a debt, and which is void as title, on account of usury, cannot be foreclosed as an equitable mortgage." Broach had borrowed money of Kelly to buy a tract of land, and given his note for something over legal interest, and a deed absolute to the land to secure its payment to the lender-Broach retaining possession. A bill was filed by Kelly to foreclose the deed as an equitable mortgage. That suit was brought on the faith of the former one of Bullard vs. Long, 68 Ga. R., 821, involving a similar deed taken as security, and similar facts, including usury. In the Broach-Kelly case, the court refused to accept the Bullard-Long case as authority—stating that the point made in the Broach case was not made in the Bullard Long case, and that therefore the decision of the latter was obiter dictum. (Whether the point was male or not in the Bullard-Long case, is now useless to discuss.

paper is not intended as a brief for the court, but as a suggestion to the law-maker to correct the wrong, if there be one).

In the Bullard and Long case, the deed was foreclosed as an equitable mortgage; the land was sold under decree; the debtor yielded possession, and complainant got his debt paid. In the Broach case, Smith, executor of Kelly, failed to get any part of his debt paid, and Broach held the land under this decision, though bought with Kelly's money.

We can imagine with what complacency the debtor, Broach, "held the fort," while the grasping money lender stood outside, shivering in the cold. In the Broach case, the court adjudged further, as per head note: "It is not decided that, when it may be necessary for a defendant to resert to equity, under like circumstances with those in this case, a court of equity may not compel him to do equity by paying the money and lawful interest thereon."

This latter ruling (though it may not be incorrect under precedent) was rather cold comfort to the lender—standing out of possession of the land; but it must have been an inspiration and a bracer to the honest borrower who held possession. That the latter would bravely persevere in "holding the fort," there is little doubt.

Now, if we remove the crusts and shams of old-time precedents, and get at the underlying principle of equity and right between the parties, how frail is the defense that holds the debtor in and keeps the creditor out! Are the hands of the one any cleaner than the hands of the other? Both are parties to the usury. The creditor would often be glad to "wash his hands" by giving up excess of interest, and a little of the legal interest besides, in order to get a *locus standi* in equity! And when it comes to a matter of "clean hands," it would seem that a little legislative lavatory could be provided for such an exigency.

In the later case of Bugg vs. Russell, same, 75 Ga. R., 837, where the defendant had given plaintiff a deed to secure money borrowed by defendant at usurious interest, to purchase the land which was conveyed by the deed to the plaintiff, in which the homestead was set up in defense by the borrower, the court say:

"While homestead rights are constitutional, and favorites of our law, fraud is not; and to permit Bugg to perpetrate such a fraud as to make a homestead out of the money which he begged Russell to lend, without paying a dollar of it back to him, would be to sink law and equity into a slough of iniquity and putridity, nauseating to every sense of moral purity."

A judicial characterization of the wrong now sought to be remedied, could hardly be more emphatic than this.

In this case of Bugg vs. Russell, the court forced the defendant into the lavatory, and made him do the "clean thing," before he could enjoy his possession. In the other case, the lender prayed for the lavatory—was ready, willing and urgent to be washed, and the court turned him away unwashed and forlorn. When the principle, the equity between the parties, as in these cases, is practically the same, why should not the duty of doing equity rest on the one as well as on the other?

In Campbell & Jones vs. Murray et al., 62 Ga. R., p. 86, the court say:

"But though a deed be void for usury, why should it be cancelled, so long as the debt and lawful interest remain unpaid?

"It is his (the lender's) property until the purpose for which it was given has been subserved, so far as that purpose is consistent with equity and good conscience. And what under the sun is more consistent with the best equity and the best conscience, than for a creditor to receive his principal and lawful interest?"

Well, if this be so, why not permit the creditor, whether he is in possession or not, to come into court and do equity, that is, remit the usury, so as to recover his principal and interest? If it be against the best equity and the best conscience to deny the lender his just claim, surely the remedy is easy by which he can secure it.

It is too late in the day to say that the lender, as in the Broach-Kelly case, and other like cases, committed a fraud or a crime which subjected him to disabilities. The excess of interest agreed on is simply forfeitable at the option of the borrower. There seems no good reason why the doctrine as to "the better position" of one party over the other should be applied to cases of this sort. The effect is, the lender is unreasonably punished, and the borrower undeservedly rewarded. Besides, it is a reproach to the manhood of the borrower to say that he is more under the protection of the court than the lender, and Chief Justice Treby was a philosopher, as well as judge, when he so decided. (Salkeld R., 22). To hold, at this day, when a large majority of the best men in the country are engaged in active industries and enterprises, and can often afford to offer liberal terms for the use of money, that the borrower is in the "better position," because of the fact that he retains possession, is unreasonable; is without true equity to support it; is demoralizing to the parties, and calls for the corrective hand of the law maker, if not the law expounder.

Let us briefly examine this on its merits.

There is no trade a man makes in which he is less likely to be deceived than in borrowing money. In swapping horses or lots, or in making any other trade, buying or selling, he is liable to be mistaken or deceived. But in borrowing money, he knows what he needs it for: he knows exactly what he gets, and what he agrees to pay for it. a vast number, probably a majority of cases, he stands on equal terms He knows the uses of the money—its value and how Suppose he agrees to pay a little more than the legal rate to invest it. for its use, and the contract is tainted, as is said, he enjoys the principal sum he actually got all the same. It is well suited for the purposes intended, and he uses it as he intended. Its use is worth at least a part of what he promised to pay for it. Indeed, the measure of its value may be found expressed in the law of seven per cent. with the moral obligation to pay back the principal borrowed, and lawful interest for its use, underlying the express contract to pay, and a deed to secure it, equity is raised robust enough, it would seem, to enforce payment from the borrower.

When a deed is given to secure such a debt, a vital element of equity pervades it. Why should the whole instrument be declared a lifeless corpse, with such an element to keep it alive? Why should such a deed be void, when the note given for the money borrowed is valid? If the note is suable for principal and lawful interest, why not the deed also, which is given expressly to secure the debt? It may be observed here that section of the Code 2057 (f) does not declare the deed void. It is only the title to the property that is declared void. What is the difference between a mortgage and a deed absolute, when both are given to secure a debt? A mortgage, in the usual form, purports to convey title; but, by its terms, is subject to be defeated on payment of the debt. It is only under modern adjudication and legislation that it is held to be merely a security for a debt. A deed absolute, given to secure a debt, whether under section 1969 of the Code, or not, and whether bond for title is given or not, is, in legal effect, a security for Equity supplies the defeasance clause, and makes it simply a mortgage, whenever the fact that it is given to secure a debt appears. When the feoffee sues on such a deed in ejectment, he would have the right to recover the property, but for the equity right to redeem, which the feoffor may plead; and which being done, the court of law is ipso facto in effect, converted into a court of equity, and the property ordered to be sold for payment of the debt. This is just the office the ordinary mortgage performs, and it performs it, whether tainted with usury or not. Why may not the deed also?

The intention of the parties to the deed gives it its legal complexion. In 9th Wheaton, 489, it is declared: "A court of equity looks to the substantial object of the conveyance, and will consider an absolute deed as a mortgage whenever it is shown to have been intended merely as a security for the payment of a debt." Also, "The grantee in such a deed may treat it as a mortgage, and acknowledging it to be such, may apply to a court of equity to foreclose the equity of redemption, which will be decreed in like manner as if an unexceptionable defeasance were attached to the deed." This doctrine is recognized in 49 Ga. R., 133. (12 How., 139; 17 Peters, 109, etc.)

Now, if it be the *intention*, where a decd absolute to secure a debt is executed to the lender, that it shall be, and therefore in legal effect is, an equitable mortgage, enforceable as such, it is hard to perceive any vital difference between that and the mortgage proper, as to the remedy for enforcement of the debt. The title that is in the deed absolute to secure payment of the debt is, even where untainted with usury, simply transmuted into an equity, authorizing a decree of foreclosure and sale of the property as in a mortgage. If this be so as to a deed untainted with usury, the voiding of the *title* by usury, under the Code, ought to leave the equity principle, which springs out of the loan and deed to secure the loan, untouched.

Such is the equity that was in the mind of the court when it remarked, in *Carswell vs. Hartridge*, 55 Ga., R. 415, as follows: "As an equitable mortgage the deed (having the usury taint) may possibly have effect, so as to secure principal and lawful interest," etc.

It is thought by some members of the bar, at least, that such was the doctrine that was settled in the Bullard and Long case; and it is considered to have been very sound and conservative doctrine. Subsequent adjudications, as we have seen, went the other way, producing results which, it is believed, called for legislative remedy.

Such remedy may be found in the repeal of section of the Code 2057 (f), making the *title* void for usury. This would leave the deed taken as security foreclosable as a mortgage for principal and *legal* interest.

If, however, it be thought that the loss of the excess is not a punishment sufficiently repressive to the lender, let the section of the Code making the title void for usury, be amended by providing that the deed may be treated as an equitable mortgage, which may be fore-

closed as an ordinary mortgage for, at least, the principal of the debt.

The rigor of the law, as lately adjudicated on, would thus be reasonably relaxed, and would take from recusant borrowers weapons which tempt them to use, and whose use is apt to be as hurtful to them in a moral sense as to the lenders in a financial sense.

One of the highest objects of the law ought to be to remove from the citizen every temptation to do wrong; to show itself in every part as in harmony with just dealing; to encourage belief in the maxim that "honesty is the best policy;" in fine, to hold up to every man that mirror of rectitude into which none but the honest can look and be happy.

A word more. Let it be kept in view that ours is not a personal government, in which the citizen is under the *guardianship* of the State; but that it is meant to be a government in which every one is largely ett to his own agency, free to make his own contract, and to work out his fortunes in his own way.

The moral effect of restrictive laws is to substitute for robust, enterprising manhood, the feebleness of conscious dependence on the State's guardianship.

To hedge the citizen about with laws involving penalties and forfeitures in contracts, produces distrust and cripples enterprise.

Law-making for the people is a serious affair. It involves the employment of those great conservative factors, "wisdom, justice and moderation." The habit of tinkering at the laws grows with what it feeds on, and is fruitful of evil. In seeking to legislate for protection of one class, there must be a just regard for the rights of every other. The lender of money has the same right of protection as the man who borrows it. Class law is public injury. It is apt to be radical, and is hurtfully partial.

Certain recent money-lending transactions seem to have stirred the legislative mind. Some cases of reported extortion have caused a sensation, the outcome of which appears in certain proposed remedies of a stringent character. But the remedies may turn out worse than the disease. The disease itself was probably exceptional—sporadic rather than epidemic; whilst the remedies, once applied, may start a new set of disorders. As wise doctors often let nature work her own cure, so the wise legislator may often trust the people to take care of themselves.

One feature of a remedy just proposed, as we see in the newspapers, will show how enterprise may be embarrassed. Two citizens meet, and one agrees to lend, and the other agrees to borrow, money

at lawful interest, on the security of land. Neither knows how to examine the title or draw the security deed. If the borrower pays a lawyer to do it—however modest the fee—the deed, under the proposed law, is void, and the debt is bad, even in the hands of a bona fide purchaser, for value without notice.

Such legislation may be had on a sensation; but can hardly find approval in the considerate law-maker.

Confidence is the basis of all industrial, as well as commercial, success; and whatever strikes at that crushes all nascent enterprises. From every direction comes the call for varying our Southern products, as the sine qua non of Southern prosperity. It will be unfortunate indeed if, when high enterprise is gathering up the conditions of success-the creative mancy-power is manacled and buried under empirical legislation.

# THE EVIDENCE ACT OF 1866 OF GEORGIA.

### A PAPER

READ BEFORE

## THE GEORGIA BAR ASSOCIATION,

AUGUST 4TH, 1887.

BY HOWARD E. W. PALMER.

The object of all legal investigation is the discovery of truth. So important was the rule considered, that in all countries, before any testimony was allowed to be received on the hearing of a cause, an oath was administered to the party offered as a witness. Even among the heathen, the solemnity of an oath was required. In every stage of the world, an oath was administered before allowing the witness to give his evidence concerning any matter in dispute.

And the same reason that caused the taking of an oath—the ascertainment of the truth—caused men in all ages and in most countries to exclude certain persons from becoming witnesses to determine the truth or falsehood of the fact in controversy. By the institutes of Menu, which for years were the law of India, a party who had a pecuniary interest in the suit could not be received as a witness. A familiar friend, a menial, an enemy, a perjured man, a man who had committed a grievous offense, could not testify. Public dancers and singers, men of deep learning in Scriptures, a dependent, a person of bad fame, and quite a large class were excluded under this law. And while it will not be contended that the law was good in all respects, the point wished to be made is that the heathen thought such an exclusionary rule would tend to secure evidence from a high source that would cause the controversy to end in truth.

The Mahometans excluded, among others, drunkards, gamesters, and usurers. The Roman law excluded apostates, libelers, informers,

those who hired themselves to fight with wild beasts, and many others, when other proof could be had. The son could not testify for his father, nor the father for the son. Such are simply illustrations of the rules adopted by the ancients in the investigation of matters between themselves.

By the Common Law of England, parties to a suit, those interested in its results, husband and wife, the attorney as to all confidential communications from his client, the atheist and the convict, were excluded as witnesses. Later on, when the decisions as to the incompetency of witnesses from interest became so numerous, and the difficulty of reconciling them became more apparent, Lord Kenyon, in the case of Bent vs. Baker, laid down the rule, that in order to render a witness incompetent on the ground of interest, it must appear that either he was directly interested in the event of the suit, or that he could avail himself of the verdict in the cause, so as to give it in evidence on some future occasion in support of his own claim. No matter how small the interest might be, the witness was incompetent. This incompetency was frequently overcome by releasing the party from liability. first general statute on this subject in England was enacted in the 3rd and 4th William, which provided that no one offered as a witness should be excluded from testifying on the ground that the verdict or judgment in the action could be used for or against him. Subsequently, by the act of 6th and 7th Victoria, it was provided that no one except a party, or the husband or wife of a party, should be excluded on the ground of interest in the action or event of the trial. The statute of oth and 10th Victoria provided, that the parties to an action and their wives might be examined on oath, either on behalf of the plaintiff or Later, by statute of 14th and 15th Victoria, it was provided that parties or persons on whose behalf a suit is brought or defended, shall be competent and compellable to testify as witnesses for either party, except that, in criminal proceedings for an indictable offense, neither the party charged nor the husband or wife of such party could This act did not apply to actions founded on adultery, be a witness. or for a breach of promise of marriage. By act of 16th and 17th Victoria, the husband or wife of a party in a civil action was made competent as a witness except in cases of adultery, but with the proviso that the husband or wife should not be compelled to disclose any confidential communications made during marriage. And again, by the 32nd and 33rd Victoria, it was enacted, that parties to any action for breach of promise of marriage shall be competent to give evidence in

such action, with the proviso that no verdict shall be had unless his or her testimony shall be corroborated by some other material evidence in support of such promise. This act also provided that parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding, with a proviso that no witness in any such proceeding, whether a party or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery.

By the 22nd and 23rd Victoria, the wife and the husband are competent and compellable to give evidence on a petition by the wife praying that the marriage may be dissolved by reason of the adultery and cruel treatment of the husband, but it will be observed that the 32nd and 33rd Victoria provides that no question or answer shall be propounded to or received from either party, as to the adultery, unless the party has been first examined in chief.

On December 11th, 1841, an act was passed by the Legislature of Georgia providing that no person shall be excluded as a witness on account of religious belief, but the fact of such belief might be shown, to be considered by the jury.

As early as the August Term, 1853, in the case of Johnson vs. The State, Judge Lumpkin, in delivering the opinion of the court, in commenting upon the competency of witnesses, said: "I would remark that the civil law is a system which abounds in restrictions upon the admission of testimony. It extended its prohibition to relations; parents and children; servants and domestics; freedmen and clients; advocates, attorneys, tutors, curators; persons who had criminal prosecutions with either party; and those who by eating or drinking with the party, had thrown themselves open to the suspicion of subornation. Still great discretion was given to the judge, both in admitting and excluding testimony, and in judging of its weight.

"And formerly, in England, whole juries were composed of rude and illiterate men—a system of excluding testimony grew up, more technical and artificial than any to be found in the world.

"But as jurors have become more capable of exercising their functions intelligently, the judges, both in England and in this country, are struggling constantly to open the door wide as possible: aye, to take if off the hinges, to let in all facts calculated to affect the minds of the jury in arriving at a correct conclusion. Hence so many modern exceptions to ancient rules of evidence; so many chapters and notes, where the exceptions cover much broader ground than the rule itself.

"By Lord Denman's Act, which received the royal approbation some ten years ago, the objection of incompetency, as far as interest and infamy go, is abolished in Great Britain. Indeed, by a statute of the late Parliament, even husbands and wives may testify for and against each other, except in certain excepted cases. And in this respect the mother country is in advance of her children, though hitherto in legal reforms they have taken the lead of her. But she has stopped infinitely short of the true point.

"Truth, common sense, and enlightened reason, alike demand the abolition of all those artificial rules which shut out any fact from the jury, however remotely relevant, or from whatever source derived, which would assist them in coming to a satisfactory verdict."

In 1857 the General Assembly provided, that each party might examine the other party as a witness. The last section of the Act, however, provides that nothing in this Act shall be construed to permit any party to be a witness for himself on his own motion.

The law of competency of witnesses which existed in Georgia prior to the Act of 1866 is codified in the Code of 1861, sections 3772 to 3785, as follows:

- 3772. Witnesses are incompetent who are deficient in understanding; who are infamous by reason of crime; who are interested in the event of the suit; who are related as husband and wife; by reason of their ignoble status, such as slaves and free persons of color. Religious belief goes only to the credit.
- 3773. At fourteen years of age the law presumes a child to have sufficient understanding to testify. Prior to that age the court must decide upon examination.
- 3774. No physical defects in any of the senses incapacitates a witness. An interpreter may explain his evidence.
- 3775. Drunkenness which dethrones reason and memory incapacitates during its continuance.
- 3776. The court must, by examination, decide upon the capacity of one alleged to be incompetent from idiocy, lunacy or insanity, or drunkenness.
- 3777. Persons convicted of treason or any felony are incompetent to testify in any cause after sentence passed and pending execution thereof, except on criminal prosecution for escape or rescue. If he be a party to a case, necessary affidavits to obtain his civil rights may be made by him.

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- 3778. Every person is incompetent unless called by the opposite party, whether a party to the record or not, who has a direct legal interest in the event of the suit, or for or against whom the record might be legal evidence in some subsequent suit.
- 3779. An interest in the question, an honorary obligation, an imaginary interest, or a remote, contingent or uncertain interest, will not disqualify, but goes to the credit.
- 3780. The following also are exceptions to the general rule in reference to interest:

Persons declared competent by statute, notwithstanding their interest.

Persons entitled to rewards on conviction in criminal prosecutions.

Agents or bailees called to prove facts done for their principals in the course of their employment.

Witnesses whose interest is balanced on either side.

Interest acquired by a witness subsequent to his being subpoenaed, either willfully to render himself incompetent, or fraudulently by the other party.

Nominal parties to the record, liable only for the costs.

- 3781. An interested witness may be rendered competent at any time before examination, by a release either made to or by him. Neither he nor the party, by refusing to accept the release, can continue his incompetency.
- 3782. Husband and wife, lawfully married, cannot be witnesses for or against each other, nor can the wife be a witness for a third person, where her testimony may indirectly affect her husband. The objection exists after the dissolution of the marriage, by death or otherwise, as to all knowledge acquired by either party by reason of the marriage relation. An exception to this general rule exists in all criminal or quasi criminal proceedings against either party for offences upon the personof the other.
- 3783. An exception to the rule excluding interested parties exists in all cases where, from necessity or convenience, the oath of the party is received by the court in proof of facts preliminary to other evidence, or in the conduct of a cause. The evidence of the party is also received in odium spoliatoris when, after proof of the tort, the extent of the injury may be proved by him, and against a bailor guilty of negligence, to show the extent of the loss, there being no other evidence within the party's power; and in certain inferior courts where by law this evidence is admitted.

3784. The objection to competency, if known, must be taken before the witness is examined at all. It may be proved by the witness himself, or by other testimony, if proved by other testimony, the witness is incompetent to explain it away.

3785. A deposit of money to cover all costs, or any other act which, in the judgment of the court, relieves the witness from his interest or other ground of incompetency, will restore his competency.

At the December term, 1866, of the Supreme Court, in the case of Smith vs. Bell, the only question in the case was the competency of Bell. In deciding that the witness was competent, and in commenting upon the law as it then stood, Judge Lumpkin, in delivering the opinion of the court, said: "We doubt not, before this court again sits in this capitol, if ever it does, all this machinery to qualify a party to swear, on account of his interest, will be done away with, and probably the defendant, as well as the plaintiff, will be entitled to his oath. This is my hope, at least. No State in the Union has taken a step backward! which has tried the experiment; neither has England; thus demonstrating by experience that progress in this direction works well." not unlikely that the utterances of this great man had a large influence upon the Legislature which passed the Evidence Act of 1866. It may be a matter of interest, however, to give in full this sweeping statute and its history, as it appears from the journal of the Senate and House of that session. This act, as finally passed, is as follows:

An Act to declare certain persons competent witnesses, as in the act set forth, and for other purposes.

Whereas, the inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts, both in civil and criminal cases, shall be laid before the persons who are to decide upon them, and that such persons should exercise their judgment upon the credit of the witnesses adduced for the truth of testimony:

SECTION 1. Be it enacted, etc., That in all cases hereafter tried, ho person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest, or from being a party, from giving evidence either in person or by depositions, according to the practice of the courts on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any court or before any judge, jury, sheriff, coroner, magistrate, officer or party, having by law or consent of parties, authority to hear, receive and examine evidence, but that every person so offered shall be competent and compellable to give evidence on behalf of either

or any of the parties to the said suit, action or other proceeding, except as hereinafter excepted: *provided*, that when one of the original parties to the contract or cause of action in issue and on trial is dead, or is shown to the court to be insane, or when an executor or administrator is a party in any suit on a contract of his testator or intestate, the other party shall not be admitted to testify in his own favor.

SEC. II. But nothing herein contained shall render any person, who, in any criminal proceeding, is charged with the commission of any indictable offense, or any offense punishable on summary conviction, competent or compellable, to give evidence for or against himself, or herself, or shall render any person compellable to answer any question tending to criminate himself or herself; or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband; nor shall any attorney be compellable to give evidence for or against his client.

SEC. III. Nothing herein contained shall apply to any action, suit, or proceeding, or bill, in any court of law or equity instituted in consequence of adultery, or to any action for breach of promise of marriage.

SEC. IV. Persons who have not the use of reason, as idiots, lunatics during lunacy, and chil !ren who do not understand the nature of an oath, are incompetent."

This bill was introduced in the Senate on Friday, November 2nd, 1866, and read the first time. On November 5th, 1866, it was read the second time and referred to the Judiciary Committee. On November 16th, 1866, the Committee, through its Chairman, reported the bill back with a recommendation that it do pass. On November 21st, 1866, fifty copies of this bill were ordered printed and its consideration was made the special order for Monday, November 26th. this day further consideration was postponed until Wednesday, Novem-On the 28th, the Senate went into committee of the whole for the further consideration of this measure, and reported in favor of the passage of the bill as amended, the amendment proposed being the proviso to Section 1. On the final vote the year and nays were called, and resulted in 13 yeas and 17 nays. So the bill was lost. On November 29th, the Senate met and adjourned till the 30th, when so much of the journal as related to this bill was reconsidered. On December 5th, further consideration of the bill was had. An amendment, "Nor shall any attorney be compellable to give evidence for or against his client," was offered, and agreed to. It was moved to further amend by adding after the word party, in the sixth line of the proviso, the words "in any suit on a contract of his testator or intestate," which was agreed to. It was also moved to amend by adding a proviso, "That no party having

a legal interest in any suit, according to the laws now of force in this State, shall be sworn in open court, but such party having a legal interest, shall have the right to have their interrogatories taken and read. according to the laws now of force on the trial of their cause," which was lost. An amendment to strike out the words, "by reason of incapacity for crime," was also lost. The bill as thus amended passed the Senate December 5th, 1866. The Senate reported its action to the House December 6th, and on the 7th (afternoon session) the bill was read the first time. On the 10th, at the night session, it was read the second time and referred to the Judiciary. Committee. At the morning session of December 11th, the committee reported back that it had had under consideration certain bills, but not having time to examine them critically, in consequence of the late period at which they were referred, had however examined them to see that they contained nothing particularly objectionable, and therefore reported them without recommendation. This report simply refers to the bills by numbers, and covers 20 Senate bills and 3 House bills. The House Journal does not show any other report of the Committee on the bill under consideration, and hence it is concluded that the Evidence Act was embraced in this report. the morning session of December 12th, the bill was read the third time and passed. On December 13th, a motion to reconsider this measure was made and lost. On December 14th, the Senate and House adjourned sine die, and on December 15th the Act received Executive approval, and thus became a law. It appears to have been hasty legislation. True the measure was discussed in the Senate, but in the House it seems that even the committee to which the bill was referred did not have time to consider it, and so reported during the closing hours of the session. That a system which had been in practice in the courts of this State from its earliest period, and under which system the people had settled their differences, when compelled to resort to litigation, should be so radically changed, and that too in apparent haste, is somewhat surprising. May it not in truth be said that the Evidence Act of 1866 did not receive due deliberation?

The preamble lays down the broad proposition, in substance, that no exclusionary rule should obtain,—that everybody should be competent to testify in the courts of justice, the party, the criminal, et id omne genus, because inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in civil and criminal cases, should be laid before the persons to decide. Let credibility be the

only test. The present law obstructs the inquiry after truth, and now henceforth there shall be no obstruction; and yet this same act keeps in force incapacity in certain cases; it obstructs the inquiry after truth; it prevents the hearing of all the facts in all cases. It says where a party to the original contract is dead, the other party is incapacitated; the husband is incompetent for or against his wife, and the wife for or against the husband. The act recognizes the wisdom of the exclusionary rule as to the party in any action instituted in consequence of adultery or for breach of promise of marriage. If the preamble is true, the act is wrong, because it falls far short of the sweeping statements contained in it. Why not allow a party to testify when the other party is dead? Why not compel the wife or husband to testify in a controversy between them? Why not compel the attorney to disclose the facts confided to him by his client? Why not compel the defendant in a criminal case to state all facts known to him? Why, in a proceeding in consequence of adultery, or in a suit by reason of a breach of promise of marriage, are certain persons rendered incompetent? Would not a strict examination of these parties tend to secure full information as to the facts? If inquiry after truth should not be obstructed, why prescribe that the foregoing parties shall not be competent to testify as to facts in their possession? And yet this law obstructs the inquiry after truth in courts of justice. But the exceptions therein set forth are wise and should obtain. It is a recognized principle that, in certain cases, the hearing of the truth is hurtful. The doctrine of estoppel obtains here. not always best to hear all the facts. And yet the logic of the preamble quoted leads to a conclusion that would necessitate the repeal of all exclusionary rules of evidence. Our law recognizes this principle and it is based on experience—that it is absolutely necessary to have laws that must control men in their conduct, which laws are not such as would obtain in an ideal state of society, where a mistake would have no place, and where love would reign supreme, and selfishness would be unknown. For illustration, A owes B one hundred dollars. It matters not how many years may pass without payment of this debt. A owes it at the end of that period, in the world of ethics, as much as he owed it at any time within four, six or twenty years, according to whether the claim be an open account, plain or sealed note; and yet, in law. A does not owe one cent if the claim is barred by the statute of But would any one presume to abolish all statutes of limitations, and leave confusion to follow? All the law can hope to do is—given man with his passions and proclivities—to provide a system

that will suit the demands of society. While in material matters progress is the rule, in all matters which deal with man as man, the case is somewhat different. Human nature is and has been the same ever The passions that sway the heart of to-day reigned since Adam fell. in the lives of men a thousand years ago. The description of the heart that David gave is recognized now as critically accurate, and hence all that can be done in legislation is to enact such laws as most nearly meet the exigencies of society, and which tend to promote healthy development of personal and national character. It will be conceded that many statutes, when viewed in the abstract, when considered without any practical relation to men and society, are far from perfect; and vet these same statutes better subserve the public interest than the ideal Society in its ideal state, where all is love, needs no law. very existence of statutes carries with it the statement that society is imperfect, and must be controlled by rules that experience shows will work the least harm. This principle obtains in the Act of 1866. exceptions say in emphatic terms that it is best not to hear all the facts in every case. Better injustice in a single instance than to tear down all rule and cause chaos. It is necessary to enact laws that, in isolated cases, may perhaps work hardships. Better this, though, than have no law, no rule of action. The Statute of Frauds is based somewhat on this Says Mr. Roberts, in his preface to his work on this statute, "It (the statute) says, 'Now that important business is transacted largely in writing; now that every business man can write, and has by him the means of writing; now that the temptation to perjury in fabrication of claims resting on oral evidence grows in proportion to the growth of wealth exposed to litigation, it is essential to impose a standard which shall require legal proof for the legal establishment of all important claims."

Judge Paxson, in the case of McKinney v. Snyder, 78 Penn. St. Reports, page 500, in delivering the opinion of the court, in May, 1875, says: "The practical working of the recent Act of Assembly (Act 1869), allowing the parties interested in a controversy to be examined as witnesses on their own behalf, admonishes us that it would be unwise to relax any of the rules of law in cases arising under the Statute of Limitations, and of Frauds and Perjuries."

But it may be insisted that oftentimes injustice would result if a party were made incompetent to testify, and anything that works injustice should not be law. It will suffice simply to say that no general law can ever be devised by man that will meet every conceivable case

that may or might arise. To say the least of it, would it not be well to require the plaintiff, in every case where an issuable defence is filed under oath, to corroborate his evidence with other testimony? Would not such a rule work well in civil cases? By reason of the humanity of the law, no man can be convicted on uncorroborated testimony of the accomplice alone. This is based on the idea of interest. But when a plaintiff or complainant has a large interest at stake, and his evidence alone is sufficient in law, may not that subtle influence, selfishness, which permeates all human interest—that idol which reigns supreme in so many hearts and demands the sacrifice of every noble impulse may not this influence, unconsciously if you will, cause the plaintiff to either omit telling the whole truth or else to exaggerate the real fact in dispute so that a verdict in accordance with his testimony might be far from real justice? Would it not at least be a measure on the conservative side to require the party to produce other testimony before he could ask a verdict against the defendant? Take the divorce laws for A files a libel, and asks the most solemn of all contracts to be annulled by reason of cruel treatment. In support of the allegations, the libellant offers his or her testimony, and frequently a total divorce follows. How much better it would be to require further proof. It must be remembered that society at large is deeply concerned and affected by all such proceedings, and a proper regard for its highest interests would seem to demand rigid rules for the setting aside of the marriage contract, at least. If adultery is the ground, the law closes the mouth of the libellant and demands other proof; but for drunkenness, desertion, incompatibility, etc., the unsupported evidence of the libellant is deemed in law, amply sufficient. The continued prosperity of all social life depends on a strict observance of domestic relations, and yet it is a fact that it is becoming a very easy matter to set aside a marriage contract.

Loose laws make loose people. When men know beforehand that they can appear in judicial tribunals and depose, on oath, in any controversy, that may arise between them, they are inclined to depend on memory for the retention of facts and expressions that should be known without doubt by the party, in event of litigation. But suppose the law preadvised them that in case of disagreement they must sustain their allegations by other evidence than their own, would not the effect be wholesome? Would not the very existence of the rule cause men to be careful in their business affairs, and cause them to commit to writing many things now left to memory? Would it be any more

unjust to say to A, you must produce other evidence than your own, than to say to him. B is not legally bound to you for C's debt unless B binds himself in writing? There is great difference between excluding a witness and excluding evidence. It is only insisted that the facts, the evidence, should be received through another channel, so it might not be warped by the passion of self-interest. At best, is there not great danger attending all parol testimony? How hard is it for a party, after the lapse of time, to tell the whole truth of any given transaction. to so state all of the acts that transpired at the time, or to recall all of the utterances of the parties so minutely that the jury in determining the issue between the parties, may render a verdict which fully accords with the truth. How much harder is it, for a party deeply interested. when testifying in his own behalt and against his adversary, to tell the whole truth? Is justice promoted by saying that credibility should be A party may not intend to commit perjury, and yet so eager is he to recover the amount claimed by him, that he may unconsciously omit some important fact or exaggerate a slight circumstance in the case, far beyond the bounds of truth. Would not these dangers be averted by requiring, as far as possible, written evidence? In the case of Shumate vs. Williams, decided at the June term, 1866, and reported in 34th Ga., page 245, Judge Lumpkin, in delivering the opinion of the court, said: "The dangers that attend parol testimony constitute the chief reason for requiring private contracts, of any kind, to be manifested by writing. These dangers are three; misapprehension, misrepresentation, and forgetfulness. The witness may have failed, at first, to understand the facts fully and correctly; he may pervert them, now, by perjury; or he may be unable to recite them all with strict accuracy, by reason of a faded memory. To withdraw from these perils recent transactions only, leaving remote ones of precisely the same class exposed to them still, would be a wild freak in legislation. If a witness is cut off from establishing a new promise. made but a single day before the suit was brought, why should he, by the same law, be trusted to set up one made five years earlier? Surely, his past perceptions—his apprehension of what he has seen and heard would not be aided by the lapse of time; his memory, however retentive, would not be less apt to miscarry; nor his conscience, if inclined to perjury, be more likely to adhere to truth. On the contrary, the soundest fruits, both of memory and veracity, are those gathered early. As a general rule, witnesses are best able to speak the truth immediately after the occurrence; and they know that if they deviate

from it wilfully, detection and exposure are more imminent. This knowledge is some restraint on mendacity."

Are not these weighty words argument sufficient to sustain the point, that on the ground of conservatism alone, the Evidence Act of 1866, goes too far?

Mr. Bentham, in his treatise on judicial evidence, assumes that there is a very close analogy between justice administered by a parent in his family, and justice administered by municipal tribunals between man and man. He says: "Before States existed, at least in any of the forms now in existence in civilized nations, families existed. Justice is not less necessary to the existence of families than of States. One of your two sons leaves his task undone, and tears his brother's clothes; both brothers claim the same plaything. Two of your servants dispute as to whose place it always is to do a given piece of work. You animadvert upon these delinquencies, you settle these disputes; it scarce occurs to you, that the study in which you have been sitting to hear this is a tribunal, a court; your elbow-chair a bench; yourself a judge. Yet you could no more perform these several operations, without performing the task of judicature, without exercising the functions of a judge, without hearing evidence, without making inquiry, than if the subject of inquiry had been the Hastings cause, the Douglas cause, or the Library Property cause." While this extravagant statement of the theorist is true in part, it contains a fallacy, which in a measure runs through his treatise on judicial evidence, viz: That judicial evidence should be received and acted upon as men do in their ordinary business affairs. The man, in his family, has no preappointed rule for determining facts which transpire in the domestic circle, and which may require investigation. has no fixed time when he will conclude his investigation, or by what method he will conduct his examination. He may decide to-day, and changing his opinion, he may re-open the question to-morrow. While such a course may obtain under the parental roof, will any one seriously insist the differences between men, involving large interests, should be adjusted on a similar plan? Does not the existence of society, and the best interests of men, demand fixed rules, arbitrary rules, by which conclusions may be reached, and a fixed time for their determination? The stability of society, and the security of private interests require preappointed rules. Otherwise, law is a misnomer, for its very essence consists in being a prescribed rule. Says Lord Ellenborough: "There hardly exists a general rule, out of which does not grow, or may be stated to grow, some possible inconvenience from a strict

observance of it. Nevertheless, the convenience of having certain fixed rules, which is far above any other consideration, has induced courts of justice to adopt them, without canvassing every particular inconvenience which ingenuity may suggest as likely to be devised from their application." There is a difference between evidence, in the usual acception of the term, and judicial evidence. The former relates to any manner of ascertaining the truth, while the latter implies a certain procedure in the investigation. In order for evidence to be received in a judicial investigation, rules must be observed. A and B resort to the courts to settle their differences. In ascertaining the truth of the case. only such testimony can be received as accords with preappointed rules for that purpose. C and D appeal to the courts, and their differences are adjudicated by the same rules. But if A and B adjust their matter by the rules of evidence in ordinary affairs of life they resort to any and all methods that ingenuity may devise; hearsay evidence may be received, oral statements of contents of written instruments, which are not lost, will be received, and, in fine, any plan either party may adopt will be acted upon. C and D may meet, and adjust their differences on a basis, so far as hearing testimony is concerned, that is entirely different from the plan pursued by A and B, and so on indefinitely; every case in the ordinary affairs of life may be different from every other case, as to the mode of hearing testimony.

But Mr. Appleton in his treatise goes to the extent of denying the wisdom of any exclusionary rule. He says: "The main business of life is in hearing and reasoning on evidence. Judicial action—decision upon proof—is an every-day affair of common life. Evidence, proof, testimony, is the same, whatever may be the occasion on which it is obtained or the uses to which it is applied; whether it be given in the ordinary affairs, or in judicial investigation, its probative force is the same. The individual-party, wife, attorney, convict, atheist,-no matter what he may be,-whose statements out of court would be entitled to, and would receive credence (and 'in the ordinary affairs of life' they might receive credence, though it were a party speaking of his own interests, a wife of her husband's, an attorney of his client's, a convict, or an atheist of those of others,) would not be the less entitled to belief, because the same statements in relation to the same subject-matter should be uttered 'The ordinary affairs of life,' all business transactions in open court. between men, are conducted upon evidence; and the same principles which guide, the same rules of judging and weighing testimony, are alike applicable in judicial investigations as in the ordinary affairs of life."

The foregoing are fair samples of the arguments used by Mr. Bentham and Mr. Appleton in support of their extreme views. Their logic leads to an abolishment of all preappointed rules for receiving testimony in judicial investigations. While it is insisted that grave doubts exist as to the wisdom of allowing parties to testify on the trial: while such a system, unconsciously if you will, causes one to swerve from the truth: while the reflex influence of such a law must be hurtful to the character of the litigant who testifies in his own behalf, are there not other considerations that favor the exclusion of the party himself from testifying? Litigation from the standpoint of the citizen is not to be desired; it entails expense upon the party and upon the community. and often engenders feelings in the breast of the litigant that are damaging to him, and prevent a healthy development of true character. Whatever, therefore, tends to prevent litigation and to enable persons to adjust their differences outside of the court-house, is desirable. least, any rule that tends to prevent a disagreement as to the facts seems to be on the side of conservatism. If, therefore, men were preadvised that, in the event of litigation, neither should be heard in court in his own behalf, would they not be very careful in their business engagements to have all matters of fact, as far as possible, reduced to writing, and thus not left to the treachery of human memory, influenced by all the passions of selfishness and love of gain? Does not the same argument that calls for the maintenance of the Statute of Frauds call for some rule that would require men to be more careful in their business affairs? To say the least of it, ought not the party, when an issuable defence is filed on oath, be required to corroborate his testimony by other proofs? Would such a rule work hardships? Would it not tend to make men more careful? Would not some such rules aid in the discovery of truth, and would not they approach pure sources? Under the law now, a judge, if related even within the fourth degree, or if he has any interest whatever in the result of the suit, is disqualified from presiding and deciding a pure question of law. A juror, if related to either party, is disqualified from serving; and yet a party whose greatest interest is at stake, whose financial condition depends upon the verdict, can relate evidence which the law says is sufficient Ought he not to be required to furnish other proof? True, the rule is relaxed in criminal cases; but does not our law go to great length when it says the bare statement of the defendant, not under oath and not under cross-examination, may be accepted instead of the sworn statement of a person not interested?

It is a very significant fact that, as early as June term, 1867, the very first case that reached the Supreme Court under the act of 1866, was where a party defendant sought to sustain the plea of failure of consideration by his own testimony, the party plaintiff being dead. The test of its wisdom is to be found in its practical workings. Will any one deny that its tendency is to promote litigation? Do not the records of the courts of this State show a large increase in the number of cases since 1866 over those brought prior to that time? Even a casual examination of the reports will show the truth of this statement. Would not men settle many of their differences without going to court but for the invitation of this Act which says: Come ye, whosoever will may come; come and swear, and be heard? Will it be contended that substantial justice was largely denied under the law as it existed prior to the Act of 1866?

But we must forbear further discussion of this most entertaining subject. We are fully aware that we have imperfectly discussed this question, and have only suggested a few of the many points that could be made in favor of a modification of the evidence laws of this State.

# TREASURER'S REPORT.

ATLANTA, GA., August 3d, 1887.

1886.	CASH ACCOUNT.		
Aug. 25.	Balance of cash on hand, as per the last annual statement.	<b>\$</b> 1,3 <b>8</b> 5	77
	Cash received during the present fiscal year, as	•	
	per schedule herewith filed	850	00
	Total		
	Less expense account	1,010	13
1887.	•		
Aug.	Balance on hand	<b>\$</b> 1,225	64
1886.	Expense Account.		
Aug. 31.	Charles Beermann & Co., for banquet	<b>\$40</b> 0	00
	Columbus Enquirer-Sun, advertising	2	25
Sept. 1.	Savannah Morning News, advertising	3	00
Sept. 18.	A. F. Cooledge, stenographer	54	00
	Cash Book, for records	2	00
Sept. 20.	Telegraph and Messenger, advertising	2	00
Oct. 2.	W. Y. Langford, janitor	5	00
Oct. 20.	A. Minis, Jr., prize essay	50	00
1887.			
Feb. 24.	Constitution Publishing Co., advertising	2	20
Feb. 28.	E. S. McCandless, cashier, Burke & Co., bill pub-		
	lications	402	
Apr. 20.	E. S. McCandless, cashier, publications and mailing	5 <b>5</b>	
June 1.	Fulton Colville, statistical report		17
June 22.	Postage, sending notices of dues	_	00
July 12.	Augusta Chronicle, advertising	_	00
	Columbus Enquirer-Sun, advertising	_	00
Aug. 2.	• • • • • • • • • • • • • • • • • • • •	_	00
	Augusta Evening News, advertising	_	50
Aug. 3.	Burke & Co.'s bill for circular letters and mailing.	11	<b>50</b>
	Total Expenses	1,010	13

#### INSTALMENT ACCOUNT.

The following schedule shows the standing of the account of the Association with each member. The first column shows the amount paid the Treasurer since the last annual statement, and the second column shows the amount still due the Association, including the dues for the present year, to-wit, from July 1st, 1887, to July 1st, 1888, payable in advance:

Anderson, Clifford	<b>8</b> 5	00	\$
Anderson, C. L	. 10	00	5 00
Angier, E. A			15 00
Arnold, Reuben			15 00
Arnold, F. A	. 5	00	
Ashley, D. C	. 5	00	5 00
Adams, S. B	. 5	00	
Akin, J. W	. 5	00	
Alexander, J. H			10 0
Bacon, A. O	. 15	00	
Barnes, Geo. T	. 5	00	
Barnett, Samuel	. 5	00	
Barrow, Pope	. 5	00	
Bartlett, C. L	. 10	00	
Basinger, W. S			5 t
Bell, H. P			10 (
Bell, G. L	•		. 15 (
Berner, R. L.			10 (
Best, E. F			15
Bigham, B H	. 5	00	
Billups, J. A			. 5
Bishop, Jas., Jr	. 5	.00,	5
Black, J. C. C	. <b>5</b>	00,	
Blandford, M. H			10
Bleckley, I. E		. 00	•
Bower, B. B	•.		10.
Boynton, J. S. (paid last year)	. 5	00	5
Brandon, Morris			10
Brantley, W. G		•	10
Broyles, E. N			10.
Brown, Julius L		.00	10
Bryan, G. W			15

Bush, I. A	10	00		
Butler, E. W			10	00
Calhoun, Patrick			10	00
Calhoun, W. L	10	00		
Camp, Felix			15	00
Cameron, H. C			5	00
Candler, J. S			15	00
Carlton, H H			15	00
Chappel, T. J			15	00
Cheney, B. B			10	00
Cheney, W. T			5	00
Chisholm, W. S.			10	00
Clarke, M J	5	00		
Clarke, J. T	10	00		
Clay, A. S			15	00
Cobb, A. J	5	00	5	00
Colley, F. H			10	00
Collier, W. E			15	00
Colville, Fulton	5	00	5	00
Cooledge, A. F	5	00		
Cotten, J. A			5	00
Cox, A. H			10	00
Cozart, W. H			5	00
Crawford, C. P	5	00	5	00
Crovatt, A. J	5	00	5	00
Cumming, J. B	5	00	5	00
Cunningham, H. C	5	00		
Dabney, W. H	5	00		
Davis, B. M			10	00
Davidson, J. S	10	00		
Davidson, W. T	5	00		
Dean, L. A			10	00
DeGraffenreid, M. (resigned)			10	00
DeLacy, J. F	5	00		
Dell, J. C			10	00
Denmark, E. P. S			5	00
Denmark, B. A	<b>5</b>	00		
Dessau, Washington	<b>5</b>	00		
Dorsey, R. T	5	00		
DuBignon, F. G	10	00		

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DuBose, Dudley				00
Dunlap, S. C				00
Eason, Thomas				00
Echols, J. W				00
Ellis, W. D				00
Ely, R. N			-	00
Erwin A. S			5	00
Erwin, L M	10	00		
Erwin, R. G			• 10	00
Estes, A. B., Jr	5	00	10	00
Estes, J. B.			15	00
Estes, Claud			10	00
Eve, W. F			15	00
Falligant, Robt			- 10	00
Featherston, C. N	5	00		
Fleming, W. H	5	00		
Foster, F. C	5	00		
Foute, A. M			10	00
Gartrell, I., J			15	00
Garrard, L. F			5	00
Ganahl, Joseph	5	00	. 5	00
Glenn, J. T	10	00		
Goetchius, H. R			15	00
Goode, S. W	10	00		
Goodyear, C. P	5	00		
Gray, J. R			15	00
Green J. W			10	00
Grimes, T. W	5	00		
Grow, S. E			10	00
Guerry, DuPont	5	00		
Gustin, G. W	5	00		
Hall. John I	10	00		
Hall, Samuel			5	00
Hammond, A. D			10	00
Hammond, N. J	5	00		
Hammond, T. A			10	00
Hammond, W. R	5	00		
Hammond, W. M.		00	5	00
Hansell, A. H.		00	_	00
Hardeman, Isaac	Ū			00
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Hardeman, R. V			15	00
Hardeman, Samuel			15	00
Harley, J. A			10	00
Harrell, D. B			15	00
Harrison, Z. D.	5	00		
Haygood, W. A	5	00		
Heyward, W. M			10	00
Hill, B. H			10	00
Hill, H. W	5	00		
Hill, W. B	5	00		
Hill, C. D	5	00	•	
Hillyer, Geo	5	00		
Hitch, S. W			อ	00
Hollis, B. P	5	00		
Holton, G. J :	5	00		
Holleman, J. T	5	00		
Hood, Arthur, Jr			5	00
Hopkins, J. L				00
Howell, G. A	10	00		
Hudson, C. B			15	00
Hutchins, N. L.	5	00		
Jackson, Henry	5	00		
Jackson, W. F	15	00		
James, J. S			20	00
Jenkins, W. F			10	00
Jenkins, J. C	5	00		
Johnson, Harvey			10	00
Johnson, W. G			10	00
Johnson, Richard	10	00		
Jordan, G. W			15	00
Jones, J. J			10	
Jones, C. C	5	00		
Jones, A. R			15	00
Kay, W. E	5	00	- *-	
Kibbee, C. C	5	00		
King, A. C		00		
King, Porter		00		
Kingsberry, S. T		00		
Kiddoo, W. D	•	00		
		• • • • • • • • • • • • • • • • • • • •		

Lanier, R. S	5 00	
Lamar, J. R		10 00
Latham, T. W		15 00
Lawton, A. R	5 00	
Lawton, A. R., Jr	5 00	
Lawton, J. L		20 00
Lester, D. P		15 00
Lester, G. N		15 - 00
Lester, R. E	15.00	
Levy, L. C	10 00	
Levy, S. Yates.		10 00
Lindsay, J. W		15 - 00
Little, W. A		10 00
Lochrane, Elgin	10 00	
Lockhart, F. T		$10 \ 00$
Lofton, W. A		20 - 00
Loring, C. A	5 00	5/00
Lumpkin, E. K	10 00	
Lumpkin, J. H	10 00	
Lyon, R. F		5/00
Lawson, T. G	5 00	5/00
Mabry, G. B.		$20 \ 00$
Maddox, J. W		15 00
Martin, J. H		20 - 00
Martin, John H	10 00	
Martin, E. W	5 00	
Matthews, H. A		15 00
Mercer, Geo. A.	10 00	
Mershon, M. L		15 00
Meldrim, P. W		5 00
Miller, F. H	5 00	
Miller, W. K	10 00	
Miller, A. L		15 00
Milledge, John		10 00
Minis, A., Jr.	10 00	
Mitchell, J. B		10 00
Mobley, J. M		15 00
Moore, W. K		20 00
Morris, Sylvanus		10 00
Murphey, A. A		15 00

Mynatt, P. L	5	00		
McCord, C. Z	5	00	5	00
McCalla, A. C			15	00
McCutchen, C. D. (resigned)	10	00		
McDaniel, J. C			10	<b>00</b> :
McIntyre, A. T. Jr	10	$00^{\circ}$		
McLendon, S. G			10	00
McNeill, J. M	10	00		
McWhorter, H	5	00	5	00
Neel, J. M	5	00		
Newman, E	5	00		
Newman, J. C			10	00
Newman, W. T.	5	00	5	00
Nisbet, James T	5	00		
O'Bryan, F. M			10	00
Pace, J. M	10	00		
Palmer, H. E. W	15	00		
Park, J. W	10	00		
Pate, A. C.			10	06
Patterson, R. W			10	00
Payne, J. C	5	00	5	00
Peabody, F. D			10	00
Peabody, Jno			10	00
Pierce, R. L			20	00
Pope, D. H			15	00.
Pressly, C. P.	5	00		
Price, W. P	5	00		
Printup, D. S			10	00.
Proudfit, Alex			10	00.
Reid, H. M			5	00.
Reid, S. A			15.	00,
Reese, M. P	5	00		٠
Reese, W. M	5	00		
Reese, Oscar			15	00
Rhett, W. H	10	00		
Riley, At. C			15	00
Roberts, D M			15	00
Roney, H. C			_	00
Rosser, L. Z	5	00	*	
Rountree, D. W	-		10	00.
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Rowell, C			5	00
Russell, J. M			5	00
Ryan, L. C			10	00
Sanford, D. B			15	00
Sessions, W. M	5	00		
Seidell, C. W	5	00		
Shubrick E. T			10	00
Shumate, I. E	10	00		
Sims, J. S			10	00
Sims, A. B			15	00
Sims, J. B			15	00
Sims, Shelton	5	00		
Smith, E. A			10	00
Smith, Burton	5	00		
Smith, Hoke	5	00		
Smith, J. M			10	00
Smith, C. C			10	00
Smith, Alex. W	5	00		
Spencer, S. B			10	00
Spence, W. N	5	00		
Stewart, J. D				00
Stanford, L. L			10.	00
Stubbs, J. M		•	10	00
Steed, C. P			10	00
Sweat, J. I			5	00
Tate, F. C			20	00
Thomas, J. A			15	00
Thomas, I., W			10	00
Thomas, G. E., Jr			15	00
Thomas, Geo. D	5	00		
Thompson, Ivy F			20	00
Tompkins, H. B			5	00
Thomson, W. S	5	00		
Trippe, R. B	10	00		
Turner, W. A			15	00
	10	00		
Turner, J. S				00
Turnbull, W. T				00
Tye, J. L				00
Underwood, J. W. H			15	00

Van Epps, H	15	00
Van Valkenberg, J. E 5 00		
Vason, D. A	15	00
Verdery, E. F	15	00
Wade, U P	5	00
Walton, B. H	10	00
Warwick, G. W	15	00
Weil, S 5 00	5	00
West, C. N	15	00
Westmoreland, T. P	10	00
Whittle, L. N	10	00
Whitfield, Robt 5 00		
Whitehead, J 10 00		
Williams, E. T	10	00
Willingham, Thos	15	00
Wimberly, W. M	20	00
Wingfield, W. B	10	00
Warnock, E	5	00
Worrill, W. C	5	00
Wright, Boykin	15	00
-		
Total\$850 00 \$2,	015	00
TOTAL AMOUNT OF ASSETS.		
Balance cash	225	61
Dues of members, as per above statement		
Liabilities, none.		
Total amount of Assets\$3,	240	64
Respectfully submitted by the Tressurer with the vouche		

Respectfully submitted by the Treasurer, with the vouchers and bank pass book, this 3d August, 1887.

S. BARNETT, Treasurer.

Examined and approved, this August 3, 1887.

MARSHALL J. CLARKE, Chairman Ex. Committee.

# REPORT OF THE COMMITTEE ON JURIS-PRUDENCE AND LAW REFORM.

To the Georgia Bar Association:

The Committee on Jurisprudence and Law Reform beg leave to report as follows upon the several matters referred to them:

I.

Bills Proposed by the American Bar Association to Promote Uniformity in the Laws of the Several States.

At a meeting of the American Bar Association, in 1882, it was resolved that the Local Councils, State and Local Bar Associations should be requested to advocate the enactment, in their respective States, of a statute of which the following is a draft:

#### AN ACT TO PREVENT FRAUDULENT DIVORCES.

The jurisdiction of the courts of this State, in suits for divorce, shallbe confined to the following classes of cases:

- 1. Where both parties were domiciled within this State when the action was commenced.
- 2. Where the plaintiff was domiciled within this State when the action was commenced, and the defendant was personally served with process-within this State.
- 3. Where one of the parties was domiciled within this State when the action was commenced, and one or the other of them actually resided within this State for one year next preceding the commencement of the action.

Your committee have no hesitation in recommending the enactment of such a statute. The only change it will work in the existing laws of our State is the requirement (as in section 3) that one of the parties to the suit shall have actually resided in the State for one year next preceding the commencement of the action. At present our law requires residence, but does not prescribe the time of residence. We think the requirement of at least one year's residence is entirely proper, especially when we reflect upon the alarming increase in the number of divorces-granted in the United States.

The American Bar Association, at its meeting in 1882, likewise recommended the passage by the legislatures of the several States of a statute of which the following is a copy:

AN ACT RELATING TO ACKNOWLEDGMENTS OF INSTRUMENTS AFFECTING REAL ESTATE.

SECTION 1.—The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments.

[Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.]

1. In the case of natural persons acting in their own right.

On this day of , 18, before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney.

On this day of , 18, before me personally appeared AB, to me known to be the person who executed the foregoing instrument in behalf of CD, and acknowledged that he executed the same, as the free act and deed of said CD.

3. In the case of corporations or joint stock associations.

On this day of 18, before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association), by authority of its Board of Directors (or trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (or association).

[In case the corporation or association has no corporate seal, omit the words, "the seal affixed to said instrument is the corporate seal of said corporation (or association) and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal."]

[In all cases add signature and title of the officer taking the acknowledgment.]

Section 2.—When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release or [of?] dower or other instrument affecting real estate, shall be required.

For the sake of promoting uniformity in the laws of the States, your committee recommend the enactment of such a statute. The first section contains nothing in conflict with our existing laws, and does not prohibit the use of other methods of attesting or acknowledging instruments affecting real estate.

Section 2 of the proposed statute would repeal section 2706 (a) of the Code of 1882, which embodies the substance of the Colonial Act of 1760. But it is questionable if this section of the Code is not now a dead letter, under the laws fixing the rights of married women. A married woman is entitled to dower only in those lands of which her husband died seized and possessed. Her right to dower cannot be barred by any lien created by the husband, though assented to by her. After marriage, and before the death of her husband, she could bar her right to dower by joining with her husband in a deed to lands to which the title came through her, but since the Act of 1866, the title to such lands remains in her. The only practical application of the section would seem to be to those cases where the title to lands came to the husband through the wife prior to 1866. The committee do not think any injury would result from the enactment of the proposed statute.

II.

### JUDGE CLARKE'S PAPER ON APPELLATE COURTS.

After considering Judge Clarke's paper on Appellate Courts, read at the meeting of this Association in 1885, your committee are of the opinion that the recommendations therein contained are, in the main, wise and prudent. These recommendations are as specific as the committee could well make them, and hence we report a general endorsement of the paper. A draft of an act of the legislature can easily be made from the paper as presented.

#### III.

#### REGISTRY LAWS.

Your committee have given due consideration to the suggestions of Mr. King, contained in his paper presented at the last meeting of this Association, in reference to registry laws. We recognize the fact that the subject will always be encompassed more or less with difficulties. Your committee, however, submit the following draft of an act as embodying the wisest regulations in the premises:

AN ACT TO PROVIDE WHEN TRANSFERS AND LIENS SHALL TAKE EFFECT
AS AGAINST THIRD PARTIES.

Section 1.—Be it enacted by the General Assembly of the State of Georgia, That deeds, mortgages and liens of all kinds, which are now required by law to be recorded in the office of the clerk of the Superior Court of each county, within a specified time, shall, as against the interests of third parties acting in good faith and without notice, take effect only from the time they are filed for record in the clerk's office. And the said clerk is required to keep a docket for such filing which shall be open for examination and inspection as other records of his office.

SECTION 2.—That the clerk of the Superior Court of each county shall be required to keep a general execution docket, and that, as against the interests of third parties acting in good faith and without notice, no money judgment obtained in any Court in this State, whether Superior Court, or County Court, or City Court, or Ordinary's Court, or Justice's Court, shall have a lien upon the property of the defendant from the rendition thereof, unless the execution issuing thereon shall be entered upon said docket within five days from the time the judgment is rendered. When the execution shall be entered upon the docket after the five days, the lien shall date from such entry.

Section 3.—That as against third parties acting in good faith and without notice, no money judgment obtained in any Court of this State, outside of the county of the defendant's residence, shall have a lien upon the property of the defendant in any other county than where obtained, unless the execution issuing thereon shall be entered upon the general execution docket of the county of his residence within twenty days from the time the judgment is rendered. When the execution shall be entered upon the docket after the twenty days, the lien shall date from such entry.

SECTION 4.—That nothing in this act shall be construed to affect the validity or force of any deed, or mortgage, or judgment, or other lien of any kind, as between the parties thereto.

SECTION 5.—That all laws or parts of laws in conflict with this act are hereby repealed.

#### IV.

# PUNISHMENT OF FRAUD, AND REACHING PROPERTY OF DEBTOR CONCEALED FROM THE CREDITOR.

This committee was also directed, by a formal resolution of the Association, passed at the meeting in 1885, to report "a draft of suitable legislation to be submitted to the General Assembly, to carry out par. 6, sec. 2, of Art. 1, of the Constitution of the State, providing that the General Assembly shall provide by law for reaching the property of the debtor concealed from the creditor."

That paragraph of the Constitution is in these words: "The General Assembly shall have power to provide for the punishment of fraud; and shall provide by law for reaching the property of the debtor concealed from the creditor."

It contains two separate provisions: 1st, The power is conferred to punish fraud. 2d, The duty is imposed to provide by law for reaching the property of the debtor concealed from the creditor.

The resolution under which your committee is acting does not seem to contemplate any report upon the first of these provisions. Hence we merely remark, in passing, that by the statue 13 Elizabeth, parties to the fraudulent conveyances therein declared to be void as against creditors were, in addition to the civil penalty, made liable to six months imprisonment. This law was re-enacted in Connecticut and South Carolina, and the States of New York and Pennsylvania have statutes upon the subject which might be taken as safe guides.

As to the second provision of the paragraph under consideration, the several acts of the legislature, passed since the adoption of the Constitution, relating to assignments and creditors' bills, were doubtless intended to be a discharge in part of the duty imposed by the Constitution.

But this committee are of the opinion that much yet remains to be done.

A debtor may, as against his creditor, conceal his property in two ways: 1st, He may allow the property itself to be seen, and conceal his ownership of it, or his interest in it. 2d, He may conceal or secrete the property itself.

To guard against the former device, which is now so commonly resorted to, every reasonable facility for ascertaining the truth should be afforded the creditor when he appeals to the courts. As a valuable

assistance in the discovery and proof of fraudulent conveyances, your committee submit the following draft of a statute, which embodies the substance of a resolution offered by a member of this committee at the last annual meeting of the Association:

AN ACT TO PROVIDE FOR THE MORE COMPLETE EXAMINATION OF CER-TAIN WITNESSES.

Section 1.—Be it enacted by the General Assembly of the State of Georgia, That in the trial of all civil cases, in any of the courts of this State, either party shall be permitted to make the opposite party to the suit, or any one who is directly interested with him in the result thereof, a witness in said cause, with the privilege of subjecting such witness to a thorough and sifting examination, and with the further privilege of impeachment, just as though the witness had testified in his own behalf, and was being cross-examined by the opposite party.

Section 2.—That upon the examination of a witness, as provided in the preceding section, he shall not be excused from answering any question upon the ground that his answer would tend to criminate him; but his answer shall not be used as evidence against him in any criminal proceeding.

SECTION 3.—That all laws and parts of laws in conflict with this act are hereby repealed.

But a very important branch of the subject still remains to be considered. When a debt has been judicially ascertained, there ought to be some process of law by which the debtor could be made to disclose and surrender his property, so that it may be subjected to the payment of his debts, reserving, of course, the homestead allowance, and wages that are not subject to garnishment. Suppose your judgment debtor tells you on the street, or in the court-house, or on the witness stand, that he has ten thousand dollars in currency in his pocket, is there any law in Georgia by which you could force him to pay your debt with one dollar of the ten thousand? If such a law exists, this committee are not aware of it?

The law should protect the poor debtor against heartless creditors; but it should not protect heartless debtors against the poor efeditor. The creditor of one man is frequently the debtor of another.

The defects in our law are supplied in New York by what is termed Supplementary Proceedings. Briefly stated, they provide that a judgment debtor may be summoned before the judge of the court for ex-

amination and be made to disclose his property, which the court takes in charge, if necessary, by a receiver, and appropriates to the payment of his debts.

The New York law has been adopted as a whole in South Carolina, and doubtless similar laws prevail in other States.

Your committee submit for consideration the following draft of a statute modeled in most part after the New York law:

AN ACT TO PROVIDE FOR SUPPLEMENTARY PROCEEDINGS AGAINST JUDG-MENT DEBTORS AND OTHERS.

Section I—Be it enacted by the General Assembly of the State of Georgia, That a judgment creditor or his assignee may, either in term time or in vacation, apply to the judge of the Superior Court of the county in which the judgment debtor resides, if a resident of this State, and if not, then to the judge of the Superior Court of the county in which the judgment was obtained, for an order requiring the said debtor to appear and answer concerning his property before such judge or before a referee appointed by him, at a time not exceeding twenty days, and at a place within the county, to be specified in the order, upon its being made to appear to the satisfaction of said judge, by sworn petition or otherwise:

Either, first, That a judgment has been obtained in any court of this State against the said debtor, and that an execution has been issued thereon, and that the same remains unsatisfied, and that a return of nulla bona has been made on said execution by the sheriff of the county in which the judgment was obtained.

Or, second, That a judgment has been obtained in any court of this State against the said debtor, and that an execution has been issued thereon, and that the same remains unsatisfied, and that the debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment.

SECTION 2.—When the execution remains unsatisfied, an order may, in like manner, be obtained as provided in the preceding section, directed to any person who has property of the judgment debtor, or is indebted to him. But in such cases, the application for the order shall be made to the judge of the Superior Court of the county in which the person to whom the order is to be directed resides.

Section 3.—When the person against whom the order is sought, as provided in either of the preceding sections of this act, is a corporation, the order may be directed to the president, cushier, secretary, treasurer, a director, or any principal officer of such a corporation.

Section 4.—A copy of the judge's order shall be served personally on the person to whom it is directed, five days before the hearing, bu.

in special cases the judge may provide for service in a different manner, as he may deem best.

SECTION 5.—The judge may at any time in his discretion, order a reference to a referee, agreed upon by the parties or appointed by him, to report the evidence and facts, and to certify the same to the judge.

SECTION 6.—All examinations under this act shall be upon oath, and witnesses may be required to appear and testify in person, or by deposition, as now provided by law for the trial of issues by a jury.

SECTION 7.—No person shall, on examination pursuant to this act, be excused from answering any question on the ground that his answer would tend to criminate him; but his answer shall not be used as evidence against him in any criminal proceeding.

SECTION 8.—The judge shall decide, according to the evidence, what property belongs to the debtor, and shall order such property as is liable for the debt, whether in the hands of the debtor or any one else, to be applied toward the satisfaction of the judgment. But any one claiming to be the owner of said property may file his claim thereto, and the same shall be tried in the manner now provided by law for the trial of claims.

SECTION 9.—The judge may appoint a receiver of the property of the debtor, with such duties and powers as usually belong to receivers in equity proceedings. He may also, by order, forbid the transfer or other disposition of the property of the debtor pending proceedings under this act.

SECTION 10—If it appear that any one alleged to have property of the debtor, or to be indebted to him, claims any interest in the property adverse to the debtor, or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; but the judge may, by order, forbid the transfer, or other disposition of the property, till a sufficient opportunity be given the receiver to commence an action, and prosecute it to judgment; but such order may be modified or dissolved by the judge granting it at any time on such security as he may direct.

SECTION II.—If any one shall disobey an order of the judge or referee, duly served, he may be punished by the judge as for a contempt.

SECTION 12.—Any decision or ruling of the judge, in any proceeding under this act, may be taken to the Supreme Court for review, under the same rules as now govern in bills of exception to applications for injunctions.

SECTION 13.—When an execution has been issued and the same remains unsatisfied, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be

necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Section 14.—All laws or parts of laws in conflict with this act are hereby repealed.

All of which is respectfully submitted to the Association for its careful and mature deliberation.

JAS. C. C. BLACK,
ALEX. S. ERWIN,
GEO. D THOMAS,
JNO. S. DAVIDSON,
WM. H. FLEMING,
Committee on Jurisprudence and Law Reform.

I think it proper to state that the committee are indebted to Mr. Wm. H. Fleming for the preparation of the foregoing report.

JAS. C. C. BLACK, Chairman.

## REPORT OF THE SPECIAL COMMITTEE ON. PREPARATION OF BILLS.

To the Georgia State Bar Association:

At your last meeting a special committee of five, consisting of W. R. Hammond, W. B. Hill, W. M. Reese, John Peabody and F. H. Miller, was appointed to prepare bills to be submitted to the General Assembly on the following subjects: Uniform Procedure, Pleading, Time of Trial, Mode of Trial, Continuances, and Proceedings in Error. The committee met in November last, and did its work. Only three members, however, were present, to-wit, W. R. Hammond, F. H. Miller and W. M. Reese. Mr. W. B. Hill furnished a satisfactory excuse for his absence, and rendered valuable aid to the committee by sending a carefully prepared draft of a bill on Uniform Procedure.

The work of the committee had been previously apportioned by the chairman among the various members of the committee, so that when we met, bills had been prepared on all, or nearly all, of these subjects, and this work of the individual members was submitted to and carefully revised by the committee as a whole, and bills were prepared to be submitted to the General Assembly.

It will be remembered that in the report, at the last session of this body, of the Special Committee on Delays in the Administration of Justice, these various subjects were treated (see page 26 of Report, et seq.), and that report was the subject of full discussion and careful revision by this body. The result of that discussion and revision was made the basis of the bills prepared by the committee on those various subjects, and those bills, thus carefully prepared and revised by the committee, were placed in the hands of the chairman for the purpose of having them introduced in the General Assembly. This was done by him, and all the bills were introduced by Mr. Berner, the Chairman of the Judiciary Committee of the House. Subsequently, the Chairman of your Committee made an effort to get a copy of those bills for the purpose of preparing this report, but after tracing them into the hands of a member of the Judiciary Committee of the House, ascertained from him that they had all been lost by him, and that he had tried in vain to find them. This was an unlooked for disaster, and of course caused serious apprehension that all our labor had been in vain, as no copies were preserved. But fortunately one of the bills, and the most important one, on Uniform Procedure, had been published in full by the press, and one of the members of our committee had been prudent enough to preserve a copy, and so the loss can be partially repaired, and we have strong reason to believe that this bill, which is now before the Judiciary Committee, will meet with favorable consideration, and may pass and become a law.

Your committee submit herewith, appended to their report, a full copy of said bill, and beg to submit, in addition thereto, some reasons why it should pass.

The bill has one main object in view, which is, to simplify and make uniform the civil procedure in the Superior Courts of the State. It abolishes the distinction between the method of procedure at law and in equity, a distinction not only considered unnecessary at the present time by the most advanced thinkers on that subject, but which can be easily shown to be cumbersome, and productive of great evil and unnecessary delays in the administration of justice.

This argument can, perhaps, best be presented by an illustration. A suitor, who has an undoubted cause of action, an unquestionable right to some sort of relief from some sort of a court, presents the facts of his case to his lawyer. That lawyer must choose his forum. he go into equity, or shall he sue at law? If he does the latter—if he elects to sue at law—he is safe, for if he makes a mistake, he can amend and claim equitable relief, provided he does not have to set up a new cause of action, which may sometimes happen with the unskilful practitioner, who in his efforts to reduce his client's facts to the legal formula may omit important and essential features, such as would change the whole countenance of the case, and make it essentially new, and such as could not, therefore, be added by way of amendment. But if he does the former, if he elects to go into the forum of equity, and n so doing makes a mistake, and his opponent demurs at the first term, then no amendment can save him. His case must go out of court sooner or later, without a hearing on the merits.

Now this bill seeks to remedy that. The suitor sets forth his facts to his lawyer. The lawyer, from those facts, without being required to elect whether he will go into law or into equity, simply goes into court setting forth in a petition, plainly, fully, and distinctly, his cause of action. Then there is no danger that he will fail to get whatever relief he is entitled to under that petition, whether legal, equitable, or both.

There are special features in the bill which need not be reviewed in this report, as the bill is copied in full, and speaks for itself; but the general object is as stated, and your committee confidently believe they have accomplished that object in about as good a form as is practicable, and they hope that you, both as a body, and each of you as individuals, will give it your hearty approbation and support.

Your committee can only regret the loss of the other bills, and trust that some provision will be made by this Association to repair the damage, in so far as it can be done.

Respectfully submitted.

W. R. HAMMOND,

Chairman.

AN ACT to be entitled an Act to provide a uniform mode of procedure in civil suits, except as herein provided.

SECTION 1.—Be it enacted by the General Assembly of the State of Georgia, That the Superior Courts of this State, on the trial of any civil case therein, shall give effect to all the rights of parties, legal or equitable, or both, in favor of either party, such as the nature of the case may allow or require. In any case where there is a conflict between the principles of law and equity, the principles of equity shall prevail.

SECTION 2.—Be it further enacted, That hereafter all civil suits begun in a Superior Court of this State, founded on a legal or equitable cause of action, for a legal or equitable remedy, or both, shall be commenced by a petition addressed to said Court, which shall set forth the cause of action, legal or equitable, or both, which is hereby allowed, and his claim for legal or equitable relief or remedy, or both, which is hereby allowed, plainly, fully, and distinctly. The statement of facts constituting the aforesaid cause of action, and ground for such remedy or relief, shall be by separate allegations, so that the defendant, in his plea or answer, may be able to specify which allegation he intends to deny, or reply to, or join issue upon. Nothing, however, in this Act contained, shall affect the right of the plaintiff or defendant to unite in his petition or answer as many and such causes of action or defense as are now allowed by law.

Section 3.—Be it further enacted, That wherever by existing law copies of contracts or other instruments of writing, records, exhibits, and abstracts of writing should be incorporated in or attached to the pleading of the parties, the same rule must be followed in pleadings referred to in Section 2 of this Act.

SECTION 4.—Be it further enacted, That whenever any extraordinary relief or remedy, as known in courts of equity, is claimed in aid of any action or defense, as provided for in Section 2 of this Act, the same may be claimed from the Superior Courts of this State, or judges thereof, according to existing law, either in the original petition and answer, or by

amendment thereto, or by special petition and pleading for that purpose. All existing laws as to amendments of pleadings and making parties, are hereby adopted as part of this Act.

SECTION 5.—Be it further enacted, That no petition need to be verified, unless it seek an extraordinary equitable relief or remedy, in which case it must be; but in every case the petitioner may verify his petition, stating what facts are true of his own knowledge, and what he believes to be true from information and belief, and when so verified, the defendant must verify his plea and answer in the same manner, or be considered in default.

Section 6.—Be it further enacted, That the form of process to the petition referred to above, shall be that at present required in actions at law, varied to meet the nature of the action, relief and remedy sought, and shall be annexed to the petition, and filed and served as now required in actions at law, unless this is impossible, when service shall be made as is now required in equitable proceedings. The time of filing in office said petition shall be as prevails in actions at law. When service by publication is required, the party to be served must be notified of the pending proceeding by letter through mail, addressed so as to inform him of such proceeding.

SECTION 7.—Be it further enacted, That the defendant may, by proper proceedings, raise issues of law or fact, legal or equitable, or both. Such issues of law must be raised by demurrer in writing, specifying on which ground said demurrer is filed. All grounds of demurrer now existing at law or in equity may be used, when applicable to his case, by the defendant. Issues of fact may be raised by plea or answer, which may be of a dilatory nature or to the merits, and must be set forth as required in Section 2 of this Act, and these grounds of defense shall be such as are now allowed at law or in equity.

SECTION 8.—Be it further enacted, That whenever the answer of the defendant is the general issue, which shall be in writing, and in this form: The defendant comes and denies the truth of each and every allegation of fact in plaintiff's petition—then the plaintiff is required to prove every material fact alleged, and the defendant is allowed to dispute every such allegation, and no other proof is admissible under the gen-If defendant fails, after pleading the general issue, to rebut the evidence in support of the various allegations of the plaintiff, the court shall impose costs on him for each allegation which the plaintiff has been compelled to prove by the defendant's plea, and not supported by his proof. This rule as to payment of costs shall also apply when the defendant has set forth in his defense an issuable fact which the plaintiff controverts, and yet offers no proof to support his contest. The defendant may answer by a special denial of such of the plaintiff's allegations as he seeks to controvert, and all material allegations not controverted shall be taken as admitted. For frivolous issues made by plaintiff and defendant, the court shall impose costs. Laws in force, which require pleadings to be sworn to, are hereby continued in force as to pleadings herein specified, when applicable.

SECTION 9.—Be it further enacted, That whenever a plea or answer is filed, notice in writing must be given of the same within ten days after the filing of the same, and failing to do so, he shall be held in default as if the same had not been filed. Pleas and answers may be demurred to as now provided by law, and if new matter is set up by defendant, not controverting the plaintiff's petition, it is required to be met by the plaintiff, as plaintiff's allegations are required to be met in Section 2 of this Act.

Section 10.—Be it further enacted, That nothing in this Act contained shall affect the mode of any special statutory proceedings now required by law, such as the foreclosure of liens and mortgages, proceedings to eject tenants and intruders, claims and illegalities, mandamus, quo warranto, prohibition, habeas corpus, possessory warrant, partition, dower, establishment of lost papers, petitions to the judge of the Superior Court at Chambers, or other special proceedings of like nature.

SECTION 11.—Be it further enacted, That all laws inconsistent with this Act, are hereby repealed, but none other.

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## REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

At the second annual meeting of the American Bar Association, held at Saratoga, on the twentieth and twenty-first days of August, 1879, the Committee on Legal Education and Admissions to the Bar of that body submitted an elaborate report, in which they discussed at length the necessity to the legal fraternity of an ample and liberal course of preliminary study, general as well as professional; and they concluded their report with the following resolutions, the adoption of which they recommended:

That the several State and other local Bar Associations be respectfully requested to recommend and further, in their respective States, the maintenance, by public authority, of schools of law provided with faculties of at least four well paid and efficient teachers, whose diploma should, upon being unanimously granted, after a fair and full written examination, be essential as a qualification for practising law.

That the said State and other local Bar Associations be respectfully requested to recommend and further in such law schools a general course of instruction, to be duly divided, for ordinary purposes, into studies and exercises of the first year, of the second year, and of the third year, including at least the following studies:

- I. Moral and Political Philosophy.
- II. The elementary and constitutional principles of the Municipal Law of England; and herein, 1st, of the Feudal Law; 2nd, the Institutes of the Municipal Law generally; 3rd, the origin and progress of the Common Law.
  - III. The Law of Real Rights and Real Remedies.
  - IV. The Law of Personal Rights and Personal Remedies.
  - V. The Law of Equity.
  - VI. The Lex Mercatoria.
  - VII. The Law of Crimes and their Punishments.
  - VIII. The Law of Nations.
  - IX. The Admiralty and Maritime Law.
  - X. The Civil or Roman Law.

XI. The Constitution and Laws of the United States, and herein of the jurisdiction and practice of the Courts of the United States.

XII. Comparative Jurisprudence, and the Constitution and Laws of the several States of the Union.

XIII. Political Economy.

That the said State and other local Bar Associations be respectfully requested to recommend and further, in such law schools, the requirement of attendance on at least the studies and exercises appointed for said course of three years, as a qualification for examination to be admitted to the Bar.

Upon this report the American Bar Association took no action; and your committee are not advised that any State Bar Association has recommended or furthered its suggestions. We do not feel able to urge them before this body. We admire and applaud the lofty standard of professional attainment erected by this report. We yield to none in our high appreciation of the great benefits to be conferred upon a legal career by a liberal and ample course of preliminary culture; and we recognize the brilliant lustre it must impart to all the professional weapons with which the work of conquest, in this cultivated era, is to be achieved.

But your committee, especially in view of the previous course of this Association upon the subject, deem it wise to limit their suggestions and report within the scope of practical attainment.

A brief review of the action of this body may not be inappropriate. At the first meeting of this Association, at Atlanta, on August 14, 1884, the Committee on Legal Education and Admission to the Bar, through its chairman, the Hon. Joseph B. Cumming, submitted a report, the salient features of which were the requirement of a preliminary course of preparation, for say three years, before admission to the bar; a thorough and regular examination of the candidate by written questions and answers, and the appointment by the Supreme Court of a board of four examiners for each judicial circuit in the State. This report, without a discussion, was laid upon the table. At the second annual meeting of the Association, held at Atlanta, on the fifth and sixth of August. 1885, this report was brought to its attention, and in connection therewith, Mr. Cumming, the chairman of the committee, submitted the draft of a bill to carry its provisions into effect. A protracted and interesting debate ensued, which developed opposition to the report of the committee and to the bill, and to a bill submitted by Mr. Dessau. Both bills, on motion, were referred back to the committee, which

offered, through Mr. Thomas, an amended bill. After further debatethe whole matter was laid upon the table. The main opposition to the report and bills seemed to be directed to the provisions requiring a preliminary course of study of thirty months and the appointment of a At the third annual board of examiners by the Supreme Court. meeting of this Association, held at Atlanta, on the twenty-sixth and twenty-seventh days of August, 1886, the Committee on Legal Education and Admission to the Bar, after referring to the fate of previous reports, recommended only that the examination of candidates should be in writing, and offered an amendment to section 304 of the Revised Code to that effect. Without debate the report was received and adopted, and a motion was carried that a committee formed to prepare other bills for the legislature be charged with framing a bill in accordance with said report. Your committee are not advised whether said resolution has been carried out.

In view of this summary of the previous proceedings of this Association upon the subject referred to your committee, they do not feel greatly encouraged either to reiterate former suggestions or to advance new ones. But the By-Law under which they are constituted charges them with the duty of examining and reporting what changes it is expedient to report in the system and mode of Legal Education, and of admission to the practice of the profession in the State of Georgia. Having made the examination required, they feel in duty bound to report certain changes in the existing law which they deem expedient, and demanded by the best interests of the profession and the State, leaving to the Association the resposibility of enforcing or rejecting their views.

And, first, your committee are of the opinion that no one should be admitted to practice at the bar until he has attained the age of twenty-one years, and shall furnish to the committee of examination satisfactory evidence that he has enjoyed a preliminary training and experience of at least one year, within a period of three years next preceding his admission, in some approved law school or college, or in the office of some practitioner of recognized standing and ability. Your committee think that a definite portion of practical experience should be a recognized element of qualification for admission, and that no amount of mere book lore can compensate for the lack of that demo n-strative ability, which can be acquired only in the practical pursuit of the profession. In no other business is the student permitted to prosecute his work until he has learned to handle his tools. Physicians

in Georgia must exhibit a diploma from a regular medical school or -college, unless they were practicing medicine prior to January 1st, 1847; and such diploma is always a certificate of a prescribed apprenticeship. Druggists can be licensed to practice their profession only by a board equipped with three years experience, upon the production of proof of their own practical experience for periods varying from three to ten years. Almost every guild and calling now demands of its votaries a definite preliminary experience. Shall the profession of the law require The merest tyro, when admitted to practice, may be called upon to give advice or take action in reference to life, property or reputation, the result of which may be lasting and irrevocable. He may be suddenly summoned to prepare a will, amidst the agonies of dissolution, the issue of which may involve the comfort and happiness of genera-Equipped only with the learning of the books, and instructed by his private studies alone, without any practical experience or knowledge of professional methods, is he properly equipped to discharge these grave and responsible functions; and should the State launch him upon his professional career until he has at least acquired some practical knowledge of handling the ropes and shifting the sails?

The effect of a serious error, committed at the outset of his voyage, is a disaster not only to the recipient of his bad advice or impotent action, but is a burden upon his future progress which clogs his career, and through his error reflects upon the profession which he represents.

Your committee would gladly recommend a period of apprenticeship exceeding one year, but they fear that such recommendation would not receive the sanction of this body, or the aid of the General Assembly. Second, your committee are of the opinion that all applicants for admission to the bar should be examined upon written questions and answers, and they heartily concur in the recommendations of preceding committees upon this point. The advantages of written over oral examinations appear obvious and manifold. In recent years great attention has been paid to this subject by educators, and a general concurrence of opinion has been reached that oral questions and answers should give way to a written test.

In the first place, this system of examination is much more thorough and searching. The questions can be deliberately and advisedly prepared by the board of examiners at their leisure, and so framed as to cover a large area without re-traversing the same ground. Under the present system the oral queries are propounded without previous consultation and arrangement by the board, and present no systematic plan

or concurrence of views. They are necessarily hap-hazard in their character, and are prompted by the res gesta of each particular examination. varying according to the time allowed, the pressure of business, and the present disposition and temper of questioner and respondent. No record of the procedure and result is preserved, and nothing is gained towards the formulation of a plan or the improvement of the system. The time during which an oral examination can be conducted in open court is necessarily brief, and subordinate to the business and convenience of the tribunal and its officials. The replies are given at once. and evidence the readiness or volubility of the student rather than the extent or accuracy of his knowledge. As no record is kept, the effect of such replies rapidly dissipates, and they cannot be subjected to the calm after-test of critical analysis to which written responses are subject. A glib oral examination may deceive, for the moment, even a cautious instructor. In the careful investigation of recorded replies, error of estimate would seem almost impossible. A written examination need not be conducted in open court, to trespass upon the convenience of the public. It can be carried on at any time and place which may be suitable to the board, and can be adjourned from day to day. The present oral examination is completed at a single sitting of the court. and is squeezed into a convenient corner of the day to accommodate the interests of all concerned. At a written examination, the applicants should be sworn to obtain no assistance in answering the questions propounded from companions, books, memoranda, or other sources. whatever, and the penalty of false swearing, in addition to that prescribed by the Code, should be the deprivation of a commission, or the annullment of one already granted, upon discovery of the fraud. board of examiners should subject the written answers to a careful and deliberate test at their leisure, but within a prescribed period, should establish a grade, which should be uniform throughout the State, and rigidly reject all applicants who fail to attain it. Such applicants could be accorded a future examination at a later day. A written report should be made to the court, and a written record kept of the result of each examination, with any accompanying facts worthy of note. questions and answers should be sealed up and filed, subject to examination only at the request of the board of examiners then in officeunder the order of the court. Each applicant should be sworn never to divulge any of the questions propounded or the answers made, under the penalties aforesaid.

In the second place, written examinations are more uniform in their

character than oral examinations can possibly be. Some of the reasons for this uniformity have already been given. They are free from the haste, uncertainty and variation of oral questions and answers. the present plan, it is impossible to establish a settled system of examination. No records are kept, no information diffused, and no precedents erected. This important part of a great science can never acquire scientific accuracy or method. A well established system of written questions and answers, with contemporaneous recordation, must provoke inquiry, disseminate information, and gradually diffuse throughout the State a settled and uniform system of legal education and admission to the bar. To substitute plan for accident, stability for uncertainty. and uniformity for variety, must certainly tend to elevate the professional standard. In the third place, the system of written examinations possesses the great virtue of impartiality. All candidates are tried by the same test, and must stand or fall according to their real merit. The same questions are addressed, and the same facilities accorded to all-If such an examination be honestly conducted, its partial administration is impossible. It is not subject to the haste or excitement of the moment, but its preparation is complete and deliberate, and its consummation fair and unbiased. The student seeks to attain a certain grade. and must rely entirely upon himself. He cannot achieve success by accident or by luck. He must submit to and abide by the same equal test. In the ordinary oral examination, as at present conducted, the examiner or the judge may be weary or pressed for time; varying circumstances may render the questions few and facile, or prolonged and difficult. The test applied to-day may not be the test applied to-morrow. The modest and diffident student may succumb to the excitement or terror of the moment, and the prize may be awarded to the confidence that cannot be abashed. Every oral examination presents some of the features of a lottery. It is the glory of the system of written examinations that it is divorced from the doctrine of chances.

Third. It is the opinion of your committee that the written examination they have suggested should be conducted by a board of examiners, consisting of five members of the bar, of good standing and reputation, any three of whom should be empowered to act, appointed biennially for each judicial district in the State by the judge of the Superior Courts therein, and who shall continue to discharge the duties of examiners until their successors are duly appointed, and qualified. The examinations should be held biennially, at stated times and places, in each judicial district, and continue for such time as may be necessary

for the examination of all candidates then applying Each candidate to deposit with the clerk of the Superior Court of the county where the examination is held, in addition to the established clerk's fee, ten dollars for the use of said examiners, and to defray their expenses. Should any candidate be rejected, five dollars of said deposit shall be returned to him. Your committee feel assured that the usual liberality of the bar is a sufficient guaranty that no fee would be expected of a worthy applicant whose circumstances prevented its payment. thirty days after the completion of the examination of any candidate. the board of examiners should present a written report to the judge of the Superior Court, and, if favorable, the clerk should issue the usual certificate after the administration of the oath. The subjects upon which each candidate should be examined should be those prescribed by the Code of Georgia, including important statutes passed since the last revision, and in all other respects, except by this report modified, the requirements of the Code should be observed.

Your committee believe that the appointment of an intelligent and reliable board of examiners for each judicial district can be safely entrusted to the judge of the Superior Courts of said district, and that the members of such boards will be stimulated to an honest and efficient discharge of their duties by a high sense of obligation to their profession, and an earnest desire to elevate its standard. Your committee deem it of the highest importance that these examinations should be conducted by an established board, who will realize their responsibility and prepare themselves for the proper performance of their duties.

The present system of oral examinations in open court, however well intended, fails signally in practice. In the debate upon this subject at the second annual meeting, it was openly stated by Mr. Thomas, and not contradicted, that he was informed that in the Augusta circuit the applicant selects his own committee; that this was also the case in the Macon circuit; that he suspected the same was true in Atlanta; and that in his own circuit the judge was obliged to beg lawyers to act. Your committee has been advised of a recent instance where the candidate prepared a regular petition addressed to the court, in which he formally nominated all the members of the bar whom he desired to examine him on each particular subject required by the Code. By the advice of his friends, this petition was not presented to the court; but its preparation in perfect good faith sufficiently indicates the very loose ideas which prevail upon the subject.

We think it may be stated generally that the committee to examine

an applicant is in almost every instance suggested to the court; that its members are friendly to the candidate and anxious to secure his admis-The examination has come to be looked upon as a merely formal method of bringing a new member to the bar, and the examiners are regarded only as a committee of introduction. Legal examinations, of all others, should be free from fear, favor or affection. think it possible for a shifting body, free from all responsibility and prejudiced generally in favor of the candidate, to conduct an examination with that thoroughness and rigid impartiality demanded by the best interests of the profession, of society, and of the candidate himself. We are advised of an instance where the chairman of a committee, on the examination of an applicant, reported in open court that the committee were perfectly satisfied, immediately adding, sotto voce that the candidate knew nothing in the world about law. A most important result of this easy method of admission to the bar, or of the prevailing impression of its simplicity, is that many young men are tempted to experiment with the profession, and enter its wide open portals without serious motive or purpose. After wasting the springtime of life in its vain pursuit, they discover that they have united themselves to the profession, not for better, but for worse, and they sooner or later withdraw into other employments. The lamentable result is that all the professions and pursuits are dotted with the wrecks of premature lawyers. The young gentlemen who propose to enter this serious and responsible calling, should not be permitted to regard their examination as a mere matter of form, to be entered upon without apprehension, and to be accomplished without effort. made to appear to them of sufficient consequence to establish a fixed purpose and method of pursuit, and to challenge their earnest zeal and continuous effort. To the facile opportunities for entering the profession may be ascribed many of the more modern practices which are tending to abridge its dignity and lower the standing of its members, and to substitute, in the conduct of causes, the spirit of plunder for the once prevailing high professional temper.

Fourth. Your committee are of the opinion that the license issued to applicants should be conditional. They think that a certificate, once properly granted, should accord to the recipient all the privileges of the profession but upon the understanding that it should not become final and conclusive until the lapse of, say, three years from the date of its issue. At the expiration of that period, the judge of the Superior Court, upon the certificate of proficiency, to be ascertained by exami-

nation, and of good conduct and probity, given by the board of examiners then in office, should, without further cost to the applicant, grant his warrant of confirmation.

For special causes of removal from the bar, as provided in the Code of Georgia, the judge should be authorized, upon complaint of the board of examiners, to annul the certificate granted, and to refuse a confirmation. We think that this probate of the professional conduct and capabilities of the young practitioner would exert a salutary restraining influence over those disposed to stray from the path of strict professional rectitude, and could in no manner impede the progress of the capable and upright attorney.

Believing that some reform in professional methods is demanded by the spirit of the age, we have submitted the foregoing suggestions, because we regard them as simple, practicable and attainable. We are aware that no plan can be proposed which will receive unanimous approval, and will readily adjust itself to the views and feelings of all. But one of the high purposes of this Association, as proclaimed in its constitution, is to uphold the honor of the profession of the law. To accomplish this end, we feel assured that each member of the Association will consent to shift some favored position, to modify some cherished idea, and to yield some long harbored prejudice.

Should the suggestions of your committee be accepted and enforced, even in a modified form, we believe that a chapter will be opened in reform, to be succeeded in due sequence by other chapters of greater significance, when the members of the profession shall have multiplied, and their zeal and culture shall have increased. Then will the bar of Georgia occupy as high a plane as that achieved in the enlightened nations of Europe, or in the most advanced of the American States. The eloquent d'Agnesseau has declared that the profession of the law is as ancient as justice, as noble as virtue itself. But it necessarily results that it calls for all the solicitude of government. It concerns too closely the fortune, the honor, and the life itself, of citizens, to be left neglected. Those whose purpose it is to practice it ought to be held to make proof of their studies, of their capacity, of their good morals, and of their probity.

Respectfully submitted,

GEO. A. MERCER, Chairman.

P. W. MELDRIM, C. C. KIBBEE,

A. T. MACINTYRE, JR.

Committee.

#### MEMORIAL OF WM. E. COLLIER, ESQ.

WILLIAM E. COLLIER was born in Dekalb county. Ga., March 21st. 1855. He was thoroughly taught in the common schools of Fort Valley and Atlanta. For a long time he was a pupil of the Rev. T. B. Russell, from whom he learned many valuable truths, useful to himin his after life. He completed his education at the Georgia Military Institute, at Marietta. In 1870 he went to Bainbridge, and studied law under Wm. H. Crawford. On January 12th, 1872, he was admited to practice law in the Superior Courts, at the Superior Court of Decatur county, Judge P. J. Strozier presiding. From Bainbridge he moved to Fort Valley, and began the practice of the law. In 1873, he went to the University of Virginia to attend lectures in his chosen profession. When he returned to Fort Valley he resumed the practice of the law, and was an active practitioner to the day of his death, September 24th, 1886. Col. Collier was well known in Middle Georgia as one of the best collectors in the State. He was uncompromisingly faithful to the interests of his clients. Though starting life a poor boy. he acquired, by his pluck and energy, a considerable income. He wasdevoted to his friends, and very much enjoyed social intercourse and the pleasures of home. He was thoroughly identified with the interest of Fort Valley, and is very much missed there as well as by his many friends over the State.

#### MEMORANDA.

#### MATTERS REFERRED TO COMMITTEES.

a. To Committee on Jurisprudence and Law Reform.

Communication of Alabama State Bar Association as to codification of the law of negotiable instruments (p. 50). See Report of 1886-87, p. 207.

2. To Committee on Legal Education and Admission to the Bar.

Resolution in reference to proceedings in proper cases to disbar attorneys (p. 50).

3. To Committee on Legal Ethics.

This subject was continued in charge of the Committee (p. 32).

4. To Committee on Preparation of Bills.

Reproduction of lost bills, etc. (p. 52).

For other duties of Committees, see p. 59.

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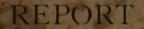
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OF THE

FIFTH ANNUAL MEETING

OF THE

# Seorgia Bar Association.

HELD AT

ATLANTA, GEORGIA,

AUGUST 8TH AND 9TH, 1888,

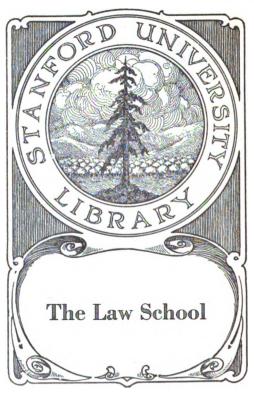
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## REPORT

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VEANULUE

#### ANNOUNCEMENT.

The next annual meeting will be held in Savannah, Georgia, May 8, 1889.

Major C. H. Smith ("Bill Arp") will read a paper on "Lawyers: As Seen by a Reformed Lawyer."

Chief-Justice Fuller has been invited to deliver the annual address.

Other papers will be read.

The appearance of these Minutes has been retarded by delay on part of authors of papers, first, in furnishing manuscript, second, in returning proof-copy sent them for revision.

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## GENERAL PROCEEDINGS.

#### FIRST DAY'S PROCEEDINGS.

ATLANTA, GA., August 8, 1888.

The Georgia Bar Association met in Fulton Superior Courtroom and was called to order by President Walter B. Hill.

The President: Gentlemen, the Association will please come to order. Under the power given by the by-laws to the Executive Committee to arrange business for the Association, they have furnished me with the following programme: First, the report of the Executive Committee, Hon. A. O. Bacon, chairman

Mr. Bacon: Mr. President, the duties of the Executive Committee are largely those which lead to the arrangement for the meetings of the Association and consist of details which are not necessary to report upon to the Association; the committee therefore directs me to limit the report simply to those matters which are of present importance.

First. That we have examined the accounts of the Treasurer and find them correctly and properly kept. The publication of the proceedings of the last meeting of the Association was delegated by the committee to Mr. Lumpkin, and that duty has been discharged by him in a manner which I am sure will be gratifying to every member of this Association who has had occasion to examine it.

The only other matter which they deem proper now to call to the, attention of the Association is the order of exercises which has been furnished to the President, and which will be found published in to-day's paper. I do not know whether it will be the desire of the Association that that shall be read or not. If so, the Secretary will furnish it for that purpose. In it will be found the arrangement which has been made for the

business and for the pleasure of the Association during this meeting.

I will simply add that in addition to what will be found stated in the published programme, there have been rooms secured at the Kimball House as head-quarters of the Association, for social and other purposes. Rooms number 102 and 104 are open for the convenience of members of the Association and all are invited to make themselves at home there during the session of the Association.

There is nothing further, I believe, for the committee to report upon.

The President: If there is no objection the report of the committee will be received and considered adopted. The next item of business is the report of the Treasurer, Mr. Barnett.

Mr. Barnett rendered his report. (See Appendix No. 1.)

The President: Is any action suggested by the Association relative to the Treasurer's report? If not it will be considered as received and adopted.

Gentlemen, the next item on the programme is the delivery of the President's address.

The President then delivered his address. (See Appendix No. 2)

The President: Gentlemen, the next item of business is the presentation of the report of the special committee on the relations of this Association to the National Bar Association. Mr. Bishop is the chairman of that committee.

Mr. Bishop: Mr. Chairman, that report has been lodged with the Secretary by the committee.

The President: Will the Secretary please read the special report, or else designate some gentleman who will read it?

The Secretary: I have another duty to perform in behalf of the Association, and I will request that Mr. Bishop, who is a member of the committee, read it. I will state that there are printed copies here and the members will perhaps find it very convenient to follow the reading.

Mr. Bishop then presented the report. (See Appendix No. 3.)

The President: The report of the committee is before the body. What action shall be taken? Judge Thompson has not yet come from the Kimball House, and there is time to discuss and act upon this report, perhaps, while we are awaiting his arrival.

Mr. Fleming: I would like to ask for information from the committee whether or not they think it advisable to affiliate with the National Bar Association this year. I see by the report that it meets to-morrow. I ask for information, for of course some motion will be made.

Mr. Bishop: I think if this Association should see fit to act with them, and delegates are appointed to-day, they can leave here to-night and arrive there to-morrow or to-morrow night. That association will remain in session for at least three days, I presume. If we desire to connect ourselves with it at all, I think there is time to be represented there at this meeting.

The President: Gentlemen, we will suspend the further consideration of this report and will now listen to Judge Thompson's address. Gentlemen, there devolves upon me now the pleasant duty of introducing Judge Seymour D. Thompson, of Missouri, who will deliver the annual address.

Judge Thompson was received with applause and read his paper. (See Appendix No. 4.)

The President: The hour for the afternoon session has been fixed at 4 o'clock by the Executive Committee, and this will be so understood unless changed by a vote of the Association. The programme for this afternoon will be taken up at the point where it was left off at the hour of 12. A disposition will be made of Mr. Bishop's report and then we will have a report of the Committee on Legal Ethics, of which Mr. Dessau is chairman, who is present, and then we will go on.

Mr. Hillyer: Mr. President, I hope I do not trespass upon the order in the suggestion which was made, and that is I desire to make a motion that our distinguished orator, to whom we have listened with so much pleasure, be requested to remain in the hall a few moments in order that those of us who have not had an opportunity to be presented to him be allowed to meet him.

Mr. Thompson: I will remain with pleasure.

Adjourned to 4 o'clock.

#### AFTERNOON SESSION-4 O'CLOCK.

The President: The Association will come to order. The order of business before the meeting at the time of the suspension of the regular order, was the consideration of a report of the special committee on the relations of this Association to the National Bar Association.

#### Mr. Bishop: I offer the following resolutions:

"Resolved, That this Association connect itself with the National Bar Association, and that the President appoint sixteen delegates to that association, dividing them into three classes, for one, two and three years respectively, their appointment to take effect, however, from the next annual meeting of said National Bar Association.

Resolved further, That the Treasurer of this Association remit to the

Resolved further, That the Treasurer of this Association remit to the Treasurer of the National Bar Association the sum of \$80 at its next annual meeting to pay the annual dues of said delegates.

nual meeting to pay the annual dues of said delegates.

Resolved further, That the report of the special committee appointed to report upon the relations between this Association and the National Bar Association be adopted, and that the Treasurer pay the expenses incurred by said committee as set forth in said report."

Mr. Bacon: Mr. President, I think that is a matter that ought not to be voted on without some discussion and consideration, and I only rise because the chair was about to put the motion, and I desire some information myself before I vote on it. I regret very much that we have so small an attendance.

I think this is a very important matter. I do not wish to be understood at present as opposing the resolutions. I want some information before I can give them my support. We have now a National Bar Association under the name of the American Bar Association, which has annual meetings and which is an organization which contemplates an association and an affiliation with all the State Bar Associations, and which has a representative in each State. I forget the names of the particular officers, but there are in the organization officers who represent each State; and the information I want is this: in what particular will the new organization, denominated the National Bar Association, accomplish any purpose which cannot now be accomplished by the American Bar Association? That is an association which, as I have said, is already organized, which has a membership of between two and three thousand-possibly more than that-distributed into every State and Territory of the United States. It may be true, and doubtless is true, that the new association, the National Bar Association, will promote some particular ends which it has in view which have not been

announced as the particular purpose of the American Bar As-But the enunciation which has heretofore been made of the American Bar Association is not to be considered exhaustive of all the purposes which may hereafter be promoted. I do not think it is to the interests of this Association, which always has an official connection with the American Bar Association, to an extent that it has sent delegates or representatives—I do not think it is to the interest of this Association to connect itself with two National Associations, unless the purposes which we have in view cannot be fully subserved by the one we are already connected with. I would be glad if the honorable gentleman who was a delegate to the National Bar Association, and who now offers these resolutions, would give us the information in what particular will a new organization advance the general purposes which we have in view, and which the American Bar Association cannot also equally advance. If there are things which it is desired to be done, and which the American Bar Association has not already done, it seems to me it is entirely competent for the membership of that association to bring it to the attention of that association, and if it is a worthy object, and if it has a commendable purpose, it seems to me it would certainly secure attention and support, and with that thought in my mind only, and with no feeling of hostility to the association, I desire to have information before I can vote, and for the purpose of eliciting information from the gentleman, and with the hope of eliciting expressions from other members present, I have ventured to make these suggestions.

Mr. Reese: Mr. President, if I heard that resolution read right it speaks of an appropriation. Is that so?

Mr. Bishop: Yes. The resolution is for the Treasurer of this Association to remit to the Treasurer of the National Bar Association \$80 at the next annual meeting, for the purpose of paying the annual dues of delegates.

Mr. Reese: All that I wish to bring to the attention of the gentleman further is to this point, that it seems in relation to the other bar association, the American Bar Association, that all these expenses devolve upon the gentlemen who were admitted as members. I know I was made a member several years ago of the American Bar Association, and I have always paid my own dues, and I suppose it is the same with those other gentlemen from Georgia, and it looks to me that it is the right way to continue it on the same line and not to pay the admission fees

of gentlemen not sent from Georgia. I do not think it is the right use of our treasury.

Mr. Bishop: Mr. President, I will state that so far as the adoption of this resolution is concerned, I am of the opinion that such a step should be taken by this Association; that it would be a wise step for us to take. So far as the payment of the dues by the delegates themselves is concerned, I do not think that would be exactly the right thing to do, because this is a different arrangement entirely from that of the American Bar Association, as I understand it. When he connects himself with the American Bar Association he is a member of that association, but here he is only a delegate to that association. He represents his bar association. He continues in that association only so long as his term lasts.

The gentleman who spoke next before the last (Mr. Bacon) said he would like to know in what particular this National Bar Association expects to accomplish these objects that are not already provided for by the American Bar Association. I do not know that I can throw much light upon that, because I am not familiar with the constitution and by-laws of the American Bar Association; not so much so as the gentleman himself, I suppose, because I am not connected with that association; but this has one distinguishing feature, and that is that it is purely representative in its capacity. When one joins the American Bar Association he is a member of that just as he is a member of this. But it is not so with the association recently organized. While I believe the purposes here are very much the same as the American Bar Association and other bar associations, yet the committee who prepared the constitution and by-laws of this National Association, after an examination of the constitution and by-laws of other associations, came to the conclusion that they were more limited than this National Association is intended to be in its operations, and the whole purpose of it is to co-operate not only with the American Bar Association, but with all other legal associations in bringing about these ends, and it is thought that they can do that more readily by having representatives from all the other bar associations, local and general, and ascer tain from them what reforms are needed, what laws require uniformity, and other purposes here set forth are pretty much the same as in ours and in others. It had the support and encouragement from some very able representatives who were there, men who were also connected with the

American Bar Association. The President of the American Bar Association himself, or one who has occupied that distinguished position, was there and encouraged them, and delivered an address which is published in some of the proceedings which are here now, and he seemed to favor this organization; he lent it his aid and encouragement by accepting the position of President, and it was distinctly stated by him at the time that when he came there he did not know whether he would favor this movement or not until he found out its purpose, and how far it would interfere with the American Bar Association. But when he arrived there and the matter was fully discussed in the association, and he learned that its purpose was to cooperate with it and to assist the American Bar Association and the local associations throughout the country, he favored the movement and thought it would be a good one.

It will be seen from the names of these persons who are officers of that association that there must be something in it, or those gentlemen would not occupy the position they do in regard to it. A great many of those gentlemen are members of the American Bar Association, and they seem to think the formation of a National Bar Association would aid very much in accomplishing the purposes that all the others had in view.

Mr. Mynatt: Mr. President, there is a very small attendance this evening, and there is no pressing necessity in this matter. There are hardly enough of us here to commit the Association one way or another. I move to postpone the consideration of this question until to-morrow morning.

This motion was carried.

The President: That brings us to the next order, which is the report of the Committee on Legal Ethics. Mr. Dessau, of Macon, is chairman. I hope Mr. Dessau will come to the rostrum, or some place where he can be better heard than out in the hall.

The report was then presented. (See Appendix No. 5.)

The President: What action will you take upon the report? It embodies suggestions for action by the Association, namely, that a committee should be appointed to codify the principles of ethics governing the conduct of the bar.

Mr. Bishop: I move a committee of three be appointed for that purpose.

Mr. Howell: Mr. President, it occurs to me that the committee that has submitted the report would be a very proper committee to consider this matter further. They have already given it attention. I merely make it as a suggestion. The committee, I understand, consists of Mr. Dessau, Mr. Brown, Col. Phillips, Mr. Smith and John Milledge, and from the statements in that report and recommendations of that committee, it occurs to me to be very proper to give the matter further attention.

Mr. Bishop: I will accept that as an amendment.

The motion as amended was then carried.

Mr. Bishop: I move that that committee, instead of being a special committee, be made one of the standing committees of the Association.

The President: The motion is that the status of the Committee on Legal Ethics be changed from that of a special committee to a standing committee of this body.

Mr. Dessau: Will that not require a change in the by-laws and constitution?

The President: It will require an addition to them.

The motion was carried.

Mr. Bacon: It is rather late for inquiry, but still I will make it. Are not these committees prescribed by the constitution?

The President: That committee is not.

Mr. Bacon: Are not the committees under the by-laws?

Mr. Dessau: My recollection of the hy-laws is that the President or Executive Committee has the power to appoint special committees.

Mr. Bacon: I am speaking about standing committees. I am speaking of the action of the body by a single vote, constituting a new standing committee. I am asking for information. I am not opposed to it at all. In what manner is provision made for a constitutional appointment of standing committees?

Mr. Dessau: That was the very question I asked of the chair myself.

Mr. Bacon: I do not know that it can be accomplished in the way we have just done it. If the constitution requires the appointment of the committees, of course an additional committee will charge the constitution.

Mr. Bishop: I do not know whether this is provided for by the constitution or not.

Mr. Flemming read article 10 of the constitution, which was as follows:

"This constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present."

The President: Unless the point of order is raised by some gentleman friendly to the action which has just been adopted, there being no motion to reconsider the action making this a standing committee, it would be the duty of the presiding officer to proceed with the next item of business.

The next item is an essay by Walter Gregory, Esq., of Atlanta. Subject, "The Funny Side of the Law."

Mr. Gregory then read his paper. (See Appendix No. 6.)

The President: The next item is the report of the Committee on Legal Education and Admission to the Bar, of which Mr. Mercer is chairman. He is not present. I will ask if any other member of the committee is present? The committee are Messrs. Mercer, Melvin, McIntire, Kibbee and McLendon. Judge Kibbee, I know, is in the city. I shall ask the Secretary to present the report so as to bring it before the body. It is already in print and has been distributed. The Secretary is not present. I will ask Mr. Flemming to take charge of it and present it to the meeting so it may come before you.

Mr. Reese: Mr. President, the gentlemen who have taken charge of that report have taken a great deal of interest in it and have spent a great deal of work upon it. I will suggest to let the report stand over and let some one of the committee be here to represent it. I suppose the committee desires the body here to take some action. I read it over at home myself, and I suppose, from the length of the bill and the important character of the provisions of the bill, that the gentlemen feel a very great interest in it, and I would suggest that it would be fair to lie over until some one of the committee can come here and represent it, particularly that part relating to legislative action.

The President: That the matter lie over without being read, Judge?

Mr. Reese: Yes, especially that part in relation to the bill that it is proposed to put before the legislature.

The President: The motion is that the report of the Committee on Legal Education be postponed until to-morrow, or until some member of this committee can be present to represent it.

The motion was carried.

The President: The next item of business is a paper by the Hon. Thomas J. Chappell. Subject, "Open Questions."

Mr. Chappell then read his paper. (See Appendix No. 7.)

The President: Gentlemen, the reading of that paper completes the programme arranged by the Executive Committee.

Mr. Howell: I move we adjourn until to-morrow morning at 10 o'clock.

Mr. Bacon: Our guest (Judge Thompson) leaves on the 5:50 train. I presume that sometime during the session of the Convention something might be done with reference to an expression of appreciation of his kind compliance with our request in his interesting address. We will hardly have an opportunity to do so now, and I think it will be well for some of the members to meet him at the train and tender to him our appreciation of him. I do not wish to do so myself, because I have been with him a great deal and it might look like I am trying to monopolize. It is only about ten minutes until the train leaves now.

The chair stated that he hoped some of the members would act upon the suggestion made by Mr. Bacon.

Adjourned.

#### MORNING SESSION.

August 9, 1888.

The President: Gentlemen, the hour has arrived for the opening of the Association. Please come to order. The first order on the programme is the report on legal education.

Mr. Reese: Mr. President, I suppose that is the same matter that was up yesterday evening and that I asked to be postponed until this morning. I do not see any of the committee here that was charged with this matter. I spoke to Judge Kibbee about it, but I do not see him here. I ask to postpone this matter until 12 o'clock. Judge Kibbee will be here then, I presume, and if he is not here, I will attend to it myself.

The President: If there is no objection, action on that report will be postponed for those reasons until 12 o'clock. The next item is the matter of the proposed union with the National Bar Association, pending on resolution offered yesterday by Mr. Bishop.

Mr. Bishop: If the Secretary will read that resolution, I think I would like to have leave to withdraw a portion of it.

The Secretary read the resolution.

Mr. Bishop: I would like to withdraw the second section of that resolution that provides for the remittance of the dues, \$80, and also that portion that provides for the payment of the expenses of that special committee.

The President: The gentleman has the right to withdraw those portions of the resolution, which, I believe, will leave the resolution in this shape—a proposition favoring a union with the National Bar Association and the appointment by the President of delegates to attend its next annual meeting in 1889.

Mr. Mynatt: Mr. President, I want to say, with regard to this proposition about becoming a member of the National Bar Association, it may be too late now to talk about the propriety of such an association, if it is already established, but it does seem to me that it is liable to conflict with the American Bar Association. Neither association is worth anything except for the recommendations they make, and for the attention they give to legislation upon subjects suggested. That is all. Now, if they conflict in their recommendations, and in their suggestions to legislative assemblies, it would be exceedingly unfortunate

But it seems now too late to discuss that question, as it is already a fixed fact that there is a National Bar Association. As I understand, the proposition is for the Georgia Bar Association to become a member of that association. I very capitally doubt myself the propriety of it, but since they have such an institution as that, it seems to me that Georgia ought to do its part toward the association and become a member. For that reason, sir, I believe these resolutions ought to pass. I moved to postpone them yesterday evening because we had such a sparse attendance. I do not know but what the same reason ought to postpone it until half after 11 or 12 o'clock. I do not know that I will make that motion, but it seems to me that some postponement would be proper.

Mr. Dessau: Mr. President, I am not in favor of the resolution which is now before the Association, and I desire to state what my reasons are, and to insist that it is not wise for the Georgia Bar Association to unite itself with any other associa-As I understand, this association has the power to appoint delegates to the American Bar Association, and it does appoint delegates to the American Bar Association, and the records of this Association will disclose the fact that at the previous annual meetings of this Association delegates have been appointed; so that so far as representation is concerned, this State Bar Association has representation officially by delegates before the American Bar Association. In addition to that, many members of this Association are already members of the American Bar Association, so that, for the purpose of obtaining representation before a national association, the matter may be considered as concluded, because we already have that association; but if you are to take sixteen delegates away from this Association at each of its annual meetings and forward them to the meetings of the National Bar Association, you will detract in a very large measure from the attendance and interest which lawyers generally are disposed to grant to this Association. In other words, a union with so many associations has a tendency to dissipate the concentrated efforts of the Georgia Bar Association.

We have now an extensive field in which to operate. If the measures which we have in view concerning our own State and our own existence are carried forward to a successful completion, certainly those matters will require much, if not all, of the time and attention which we are at liberty to bestow upon them. In addition, the withdrawal of a number of members, suggested

in this report, would be, in my judgment, detrimental to the interests of the Association. Everything which is noted in this report is covered in the constitution and in the purview of the American Bar Association. Certainly it cannot be pretended that a National Bar Association will accomplish more than the American Bar Association. That has two or three thousand members, reaching from Maine to California, and therefore it occurs to me that this Association ought not now to be called upon to do that which, in my humble judgment, would tend very largely to weaken its influence and detract from the ends we have in view. I do not think we ought to postpone the matter further. If there is a constitutional quorum present we ought to vote on it.

Mr. Bishop: Mr. President, I will state a few reasons why I favor a connection between this Association and the National Bar Association recently organized.

In the first place, so far as any conflict between this and the National Bar Association is concerned, that matter, I think, is fully settled. The fact that so many members of the American Bar Association, and such prominent members of that association, were at the National Bar Association, and were elected and accepted offices in that association, shows that there can be no conflict, and Mr. Broadhead himself, one of the Presidents of the American Bar Association, and now President of the National Bar Association, stated in his address that he did not know when he got there that he would favor an organization of that association or not, because he did not know whether or not it would conflict with the American Bar Association until he learned there whether there would be any conflict or But he was fully satisfied, and so were other members of the American Bar Association, that there would be no conflict between the two, but that they might promote the interests of As I stated yesterday, the very mention of the names of these gentlemen would show very clearly that there can be no danger to the American Bar Association in promoting and encouraging the National Association. Such men as James A. Broadhead, Montgomery Hayes and others would certainly not have gone into this thing if it would endanger the interest of the American Bar Association.

Now, I am in favor of that liberality of sentiment that would promote every association that has in view the accomplishment of such purposes as are expressed here. I do not believe in confining ourselves, and if the objects are precisely the same as that of the American Bar Association and all the association throughout the country, I could see no harm that might poss result from connecting ourselves with it and with all associations that have these objects in view. I think we ought to ercise that kind of liberal spirit.

Then, so far as withdrawing members from this Associa is concerned, there are only 16 delegates to be appointed to association. They are to be divided into three classes. I would be only 16 out of the whole number of members we have, nearly 300. I do not see that any detriment could reto this Association from a withdrawal of that number of m bers. I am not particularly wedded to this; at the same I am in favor of promoting every organization that may gotten up that has in view the accomplishment of such purp as this has.

Mr. Fleming: Mr. President, I have been thinking the resolutions a little since they were presented vesterday. it seems to me that it will be entirely proper and in every advantageous for our Association to become a member of National Bar Association. I see no necessary conflict a between the American Bar Association and the National Association, but if I had to compare those two organizations say which one of them, from the constitution of it, would i probability be most advantageous to us, I would say the Nat Bar Association was by far the one from which we could de the most benefit. That, as I understand it, is a constituent as bly. It is expected to organize State associations in every ? and Territory in the Union, and each State and each Terri are to be allowed certain representation in the National Association, so that if they are all organized each State have its own and its proportionate representation in that I It may be very important at some future time, when legisl is to be recommended to Congress or other body of that c acter, for us to have these different associations throughou Union. All members of good standing who apply, no m if there are 1,000 from one State and only 50 from ano can become members of that association; and I under also that the attendance of the American Bar Associati drawn almost entirely from those associations and those near the annual meeting places of the American Bar Associa which I believe is Saratoga. If there is to be any compa I believe that comparison will result in favor of the Nat Bar Association. We send 16 delegates and they are en

to 16 votes, and we send 5 to the American Bar Association and they are only 5 out of so many thousands. If the plan of organization of the National Bar Association is carried out, every State will be entitled to representation, provided it has a State organization. I think the National Bar Association is upon a better plan than the American Bar Association. We participate in the American Bar Association, as I understand, only as matter of courtesy. Any member of our Association can also be made members of the American Bar Association. But if we become constituent members of the National Bar Association, our delegates will go as regular delegates and have so many votes in that association. The National Bar Association, I think, has every advantage over the American Bar Association.

The other objection that was raised by Mr. Dessau, that it would take away 16 of our members to attend the session of that. I do not catch the force of at all. I do not think our constitution prescribed the time when we should meet. I think the Executive Committee fixes the time and place. I do not think the National Bar Association has fixed any time when they meet. It happens this year we meet on the 7th of August and the National Bar Association meets on the 8th. We cannot say that it will be that way any other time. In fact, it would be very easy to arrange that there should not be any conflict of that sort. I think the proper way for us to do would be to recognize that fact at once and to go in and tell them we desire to co-operate, and I think we had better pass these resolutions and send a telegram to that association, from the President of this Association, telling them that we have passed resolutions and that we will affiliate ... with them hereafter.

So far as the expense is concerned, our Association must be a member of that association, and each association as such member must be responsible for these fees, and these fees must be paid in advance. We can easily meet that by simply sending on our \$80 and allowing each one of the sixteen delegates to pay into our treasury five dollars. We have some \$2,000 in our treasury, and are abundantly able, I think, to maintain our position so far as that is concerned. I am heartily in favor of uniting with the National Bar Association.

Mr. Dessau: Before the question is put I would ask how many constitute a quorum under the constitution?

The President: Thirty are necessary to change the constitution. I suppose that otherwise a quorum is constituted by those present at a lawfully called meeting.

Mr. Brown: Mr. President, another view in addition to those that have been suggested occurs to my mind. As I understand from this report made by these gentlemen, the President of this Association appointed delegates to the meeting of the National Bar Association, where an organization was effected, and by virtue of that appointment these gentlemen who made the report attended the convention. It seems to me that it puts us in an attitude of rejecting somewhat the work of the President in making the appointments. I believe in belonging to every bar association in the world. I would like to see the State of Georgia represented in it, and whenever there is a call of any association in the United States, I would dislike very much to see the State of Georgia left out. I do not think any ill can result from joining it. If it so happens that the time conflicts with our own meeting, that, as has been suggested, can be easily changed. If our time is fixed by a constitutional clause it seems to me that we could very easily change that.

Mr. Bleckley: Mr. President, I would like to inquire of those who are here whether a union would be perpetual or whether we could secede. It occurs to me we might try it as an experiment for one time if we are allowed to do it under their constitution. I do not know how that is. We might limit our membership to one year, if the association will receive us on those terms, and I will inquire of gentlemen who are informed whether it will or not, and if it will, I move to modify the resolution so as to limit our membership for the present to one year. We can try it, and if we do not like it we can withdraw. I prefer myself belonging to all sorts of associations that you can get up unless you become tired of them.

Mr. Bishop: So far as that matter is concerned, the adoption of the amendment will be entirely unnecessary. Whenever we cease to send delegates we cease to be members of the association. As to the place of meeting, too, the purpose of the National Bar Association is to hold its meetings at different places throughout the country, and if there were many there who expressed the hope that in the near future they would meet here, they would fix the time of meeting according to the climate. If they met in the South they would hold their meeting at a time when the weather was suitable, and in the North the same way.

Mr. Bacon: Mr. President, I have not come in until just

now and I do not know what has been said. I am impressed very decidedly against the union myself for two reasons. One I stated vesterday, and that is that we are already connected officially with the American Bar Association, which answers all the purposes that it seems to me any other National Association can possibly accomplish. If that is true, then there are some objections to being connected with another one, and especially one which proposes to act in a representative, deliberative capacity. The present American Bar Association is one that is very elastic in its organization. All members of the Association can go there and attend its meetings, participate in its deliberations and vote upon the measures which are proposed before it. In addition to that there is a provision by which all bar Associations can be directly represented there by delegates. But a representation in a body of that kind, of that elastic character, is a very different thing from representation in a body such as I understand is proposed to be the constitution of the National Bar Association. That is to be strictly limited as a representative body. Well, if it is a representative body we are bound by it. We are not bound by anything the American Bar Association does unless it suits us. It does not speak for It speaks just as an assemblage of lawyers. Its recommendations are simply recommendations. Of course they carry a great moral influence, but if we belonged to a body which is constituted by a distinctive representation, we agree beforehand when we send our delegates there that what they do we shall be bound by it.

Well, now, there are some exceedingly dangerous propositions which are brought before these national bodies. There was one brought before the last American Bar Association, which I had the privilege of attending, which was an exceedingly dangerous proposition as to commercial law, which would have absolutely blotted out everything like discussion on the part of a State in its legislation if it could be carried out, which I very much doubt. It was the most radical document I ever saw, and it is to be brought up at the next meeting of the Bar Associa-It was so radical, so far reaching, that the association at its different meetings, although it was a full meeting, was unwilling to commit itself to it, and it was postponed to a succeeding meeting in order to give its members a year to examine into it to see whether they would commit themselves to it. If that association does commit itself to it we are not bound by it. It is simply an opinion of lawyers, more or less distinguished

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in character, on a policy which they as individuals, and possibly in their collective capacity, believe to be a wise policy. Suppose that bar association, which is to meet at Saratoga, was distinctively a representative body, and we had connected ourselves with it and agreed that we would each year send delegates to that association to represent us, to speak for us. Are we not morally bound, unless we adopt the resolution or plan suggested by the Chief Justice of kicking out of the traces? Are we not bound by the action of that body? But I would say that the kicking out of the traces would come a little too late in that sort of a case. It is not proper for men to say, "If your conclusions suit us we will abide them, and if they do not suit us we will not only leave you, but we will refuse to be bound by what you do."

I have a very high appreciation of the dignity of the action of the bar associations. I think if we would all endeavor to realize more fully what is the weight which should be carried by anything which we solemnly agreed to, we would be very cautious about what we did agree to. This is a very small assemblage here. The great interest in the political convention has drawn many elsewhere.

While I do not propose to be at issue with my brethren, it does seem to me that in a matter which is so far reaching in its consequences and so radical in its purposes, there ought to be a full membership present before we commit ourselves to it.

I do not know what has been said. I do not know what these gentlemen have committed themselves to, and therefore, unless what I have said has made an impression upon the minds of other gentlemen, I do not propose to put myself in the breach and try to stem the tide. I cannot understand, in the first place, where the benefit is in belonging to two national associations if one can accomplish the purposes. I cannot see the necessity of another one. Suppose one commits itself to one policy and one to another. We belong to both. We are connected with one by ties which are not as binding as those proposed now to be put upon us, but it does seem to me if we are going to have a head, no matter what you call it, there ought to be one head and not two heads. This is one case where two heads, I do not think, are better than one. [Laughter.] We know what the American Bar Association is. I do not recollect what the membership is, but certainly several thousand. It has been proceeding for a number of years with a very great degree of harmony. I think it has good prospects. Men are becoming gradually more and more interested in it. They are giving

their attention more to State and Federal legislation. One promnent feature in the proceedings of that body is the requirement laid upon the President to make a full report of all legislation which is made in the several States, and one object is to produce harmony in the legislation of the States, so far as that can be done, without interfering with the right of each State to control its own affairs. I remember that at the last meeting it took the President three hours to recite the various legislative changes which have been made in the statute laws of the various States. I mention this to show that one of the prominent objects of the American Bar Association, to-wit, the accomplishment of some uniformity in State legislation on certain matters, is one which is one of the principal matters of consideration by the American Bar Association, and therefore I would like to know what can two accomplish which one does not accomplish, and is it not true that the having of two may seriously embarrass us in an effort to accomplish that which one is best calculated to do.

I appreciate the catholic spirit of Judge Bleckley and Mr. Brown which produces a desire on their part to be connected with all bar associations, but when we are to take a subordinate position and constitute each one of them a superior body to which we shall send delegates, then it is a very serious question as to whether we could be actually or morally bound by the edicts of two masters.

Mr. Peabody: Mr. President, I think I can see that this proposition does not meet a very hearty response to join this association, and that the advantages are not so apparent as to strike one at once without explanation, and yet I see no reason why we should decide a question now that we can as well decide at the next meeting. We cannot be represented there this year, and I do not see why we should pay a year in advance and get no benefit of it. We could have a meeting here a few days before that time, and then we could decide upon it, and for these reasons I move that for the present we lay it upon the table until the next session of this Association.

Mr. Bacon: I would like to state that that motion would cut off all debate.

Mr. Peabody: Well, I do not want the motion to have that effect, but I give notice that I will make the motion after all who desire to speak can be heard. If we wait until we find out more about it we may not go in at all.

Mr. Howell: I want to suggest that embodied in those resolutions is one also to pay certain expenses which have been incurred by the committee.

The President: That has been withdrawn. The Executive Committee audited the five dollars and ordered it to be paid.

Mr. Howell: I think myself it will be well to postpone action until the next meeting.

Mr. Bishop: I have a very few more words to say. My idea is that by bringing to bear every influence that can be brought to bear to accomplish these objects, it makes no difference how many organizations there are when we have these objects in view; the more force we have, the more apt we are to accomplish the objects in view.

That the objects of this association are important ones nobody will undertake to deny. It seems to me that what Major Bacon urges as an objection is a reason why we should connect ourselves with the association. He says if we connect ourselves with it we will be bound by what it does. That association has been organized; it exists and it will doubtless continue to exist. They will prepare certain bills which will be submitted to the legislatures of the various States for their action, and they can do that whether we are connected with them or not, and it is at last for the States to determine whether they shall adopt these measures or not, and if the States adopt them we are bound by them just as much as if we were represented, and if it was a national law it would be the same thing. If they prepare their bills and Congress adopts it, we will be bound by it whether we had any representation there or not. If any change is suggested the best plan is for us to be represented there, and if we do not like it then we can oppose it. If we do not like it we can oppose it before the legislature. I think we should be connected with it because they may do these things whether we are there or not, and if we are there we can endeavor to prevent its being done. I do not see any good to be accomplished by postponing this thing. I think those who are here are fully capable of acting upon it. I think it might as well be determined here as at any other time. We do not know when the next meeting of that association will be held.

Mr. Fleming: Mr. President, just one word more, please. First, in reference to the postponement that has been suggested.

I see no good reason why we should postpone this matter. The President of the Association has appointed a committee of delegates who attended the meeting at which that bar association was organized. Those gentlemen have prepared a report and it has been sent out to the different members of the Association. We have it here. We have got the whole matter before us now; so, so far as the nature of the subject itself is concerned, it seems to me we have got as much information as we will have next year. As to the attendance. I have seen several subjects postponed from one day to another and then to another meeting because the attendance wae not large, and on those days or at those meetings the attendance would not be any better. I think we have a very good attendance to-day. We have more here than I thought we would have because of other meetings here in the city to-day. If the object of postponing it is to get more information I do not think we will have any better information next year than now, and therefore I shall interpret the motion to postpone as a motion to kill it, and if so let us vote on it right now.

As to the objection that we are sending delegates to a constituent assembly and are therefore bound by it, I cannot appreciate the force of that argument because the National Bar Association does not ask us to go in and submit ourselves to it in any sense of being governed by it. It is not a centralized government. We are just as free after we send delegates as we were before. I think in that event the best constitutional lawvers admit that we are only a confederation from which we can draw out at any time we wish. Suppose we send fifteen or sixteen delegates to the National Bar Association and the Georgia Bar Association holds a different opinion. They have no authority above us. They can prescribe no rule for us. It seems to me that they could have some just cause for complaint that three members of our Association were present at the organization and they made their report and submitted it to us here, and we simply declined to have anything to do with it at all, though I would not base my argument entirely upon a matter of courtesy because I would rather go according to our own interests.

If we postpone it to another year we will probably lose two meetings. We are losing one already. We have no representation there at all. Next year they may meet before we do, or at the same time we do, or such a short time after we do, that we could not get our delegates there. It seems to me if we are going to act at all now is the time to pass those reso-

lutions and appoint delegates to attend their next association, and if we are dissatisfied with anything they do we can decline to send delegates hereafter.

The President: The chair wishes to make one statement personal to the action of the chair in regard to the appointment of these delegates. When official communication was received requesting the President to appoint delegates to the association, the chair stated he would have no power to appoint delegates who would bind this Association, but would appoint them at their request, if desired. They stated that the meeting at Washington was only preliminary, so that the National Bar Association could not have any grievance against us nor feel that any lack of courtesy had been shown if this body should decide not to connect itself with it. I wish that matter to be eliminated from the discussion and to have no influence on the action of this body. Is there any further discussion desired on the motion to postpone?

Mr. Bacon: Mr. President, I do not propose to discuss the merits. On the question to postpone as a seeming discourtesy, it seems to me it would be much more discourteous to withdraw after having gone in than to consider carefully first whether we should go in. I say to my brother Fleming and brother Bishop, while this did not originate with me, the suggestion that I made as to the smallness of the meeting, it is not designed that that motion shall be in the nature of a motion to My object in desiring a postponement is two-fold: in the first place that we shall have a full time for deliberation; secondly, that we should have a larger body present when it is passed than we have to-day, and I do not think that even the most sensitive members of the National Bar. Association could construe our action into any discourtesy. I am at a loss to know what was the motive which started this second association, or with whom it originated, further than the fact that I see it originated in the District of Columbia, and it occurs to me if there were certain objects desired by the lawyers of that district, certain things desired by them which were not now accomplished by the present American Bar Association, the proper course would be first to see if that National Bar Association already established and organized and at work could not have its attention directed to particular things which are now sought by the National Bar Association.

When we have an active membership of 300 or 400, I do think it would be nothing but proper that this matter should be

postponed to a time when at least every member who desires shall have an opportunity to be present and to vote on a question of this importance; therefore I do trust that Mr. Peabody will press his motion, and if, when we come back here, it is the general sentiment of the Bar Association that we should join in it, I will go into it most heartily. I am ready to subordinate my private opinion at all times to the majority.

Mr. Peabody: Mr. President, I do not intend that the resolution to postpone should in any way be considered an indirect manner of killing this measure. That first meeting will have adjourned before they could hear from us. On the other hand, we would know what time their next meeting could be held, and this Association could be held in a week in advance, so we could know what States were represented there, and we could be represented just as well by joining at the next meeting of the association as we can now, and we will have the advantage of knowing what is done when we go there. Some of our members are in doubt now what they ought to do. By that time that doubt may be removed.

Mr. Steed: Mr. President, I hope we will not vote on the question of joining the association to-day for the simple reason that I for one will not be able to vote intelligently. As I understand, we are members of the American Bar Association, are we?

The President: Not as an association, but there are members of this Association who are members of that association, and hitherto we have sent delegates.

Mr. Steed: It seems to me the American Bar Association is designed to be a national institution to cover the entire country, and I do not see how we can consistently belong to two. If the National Bar Association was organized because the American Bar Association was not national in its character, but was organized for the purpose of having a National Bar Association, then we ought to come out from the American Bar Association and join the National Bar Association; and if the American Bar Association is sectional we would have good reasons for leaving that association and joining the other. I think we ought to have more information as to why this national association was organized before we go into it. I do not see how we could belong to both of them at the same time. I do not think there is room for two national associa-

tions in the country, and I hope we will postpone action on the matter until we get more information.

The President put the motion to postpone, but being in doubt as to the result, called for a rising vote, and the motion to postpone prevailed.

The President: The next item is an essay by A. H. Davis, Esq., of Atlanta, who will read a paper on the subject of "Seals"

Mr. Davis then read his paper. (See Appendix No. 8.)

The President: The next order is the report of the Committee on "Jurisprudence and Law Reform," of which Mr. Black is chairman. The committee is represented, I believe, by Mr. Fleming who is present.

Mr. Fleming then read the report. (See Appendix No. 9).

The President: Gentlemen, the chair awaits a motion in reference to the report submitted.

On motion of Judge Reese, the report was received.

The President: If there is no action suggested upon the report, the chair will proceed to the next order of business, which is the report of the Committee on "Judicial Administration," of which Judge Reese is chairman.

Judge Reese then submitted the report. (See Appendix No. 10.)

The President: The chair has heard the report of the Committee on Judical Administration. The chair awaits a proposition.

On motion of Mr. Akin, the report was received.

Mr. Thomson: I offer the following resolution:

"That the committees on Jurisprudence and on Judicial Administration be requested to bring to the attention of the next legislature the changes in legislation recommended by their reports."

This resolution was adopted.

The President: The next order on the programme is the report of the Committee on Memorials. The chairman of that committee, Mr. DuBignon, is absent, but I believe the committee is represented by Mr. Steed, who will read the report.

The report was then read. (See Appendix No. 11).

Mr. Steed stated, after he had finished reading the report, that a suggestion had been made that the memorial of Judge Hall in the Supreme Court be adopted by this Association and printed in its proceedings.

Mr. Gustin: I move that the suggestion of the committee be acted upon, and the memorial in the Supreme Court Record be printed as a part of the proceedings of this Association. While, of course, that cannot always be done with reference to every member of this Association, yet I think that in this case it is eminently true that the Association should take that action.

The President: It is moved and seconded that the proceedings in the Supreme Court relative to the death of Judge Hall be published in the next volume of the proceedings of this Association.

The motion was carried. (See Appendix No. 11.)

The President: Gentlemen, the time has arrived for the special order, the report of the Committee on Legal Education. Before taking up the report, however, the chair finds that the next subject for action will be that of the election of officers, which will require some preliminary action, and therefore, at this time, the chair suggests that it would be well if the Association would take some action in reference to the manner in which this subject should come before us. Hitherto the Executive Committee have retired, having been requested to present nominations for the offices of President and the five Vice-Presidents, while another committee has been raised by motion to report the nominations for the Executive Committee, including the Secretary and Treasurer, who are ex-officio members of the Executive Committee. The chair simply calls attention to the desirability of arranging in advance for the nominations if it is the pleasure of the Association to entertain that matter now.

Mr. Bacon: Mr. President, under a suggestion of the President to the Association, that they would be called on to make such nomination, there being no direct provisions in the constitution and by-laws for it, and going simply by the precedent, as we were informed by the President was the precedent, such members of the Executive Committee as could be got together have agreed upon certain nominations. Of course we do not

propose to submit them unless it is the pleasure of the Association to so do, and I repeat, there has not been any desire on the part of the committee to do anything we ought not to do, but we acted on the suggestion of the President that that was the precedent and we should be expected to do so. I make that statement in order that the Association may understand the position occupied by the committee and the reason for their action. Of course, if the Association desires some other method to be adopted to bring these or some other names before the Association, we will not present it at all. It is with the Association as towhat shall be done.

Mr. Dessau: Mr. President, I would like to inquire how much more there is upon the programme for to-day in order to ascertain whether or not the Association may not accomplish all of its purposes during this morning, and save us the necessity of returning this afternoon, and giving us ample time to prepare for the banquet.

The President: The chair finds on the programme, undisposed of, the report of the Committee on Prize Essays and the report of the Committee on Grievances, but there will be no report on that. The deferred action on the subject of legal education and miscellaneous and unfinished business and the election of officers completes the programme.

Mr. Dessau: Mr. President, I make the motion that we proceed to finish the entire programme during the morning session if that motion can be considered an orderly one.

This motion was carried.

The President: Mr. Bacon's statement to the Association disposes of the matter relative to the nomination of President and Vice-Presidents for the ensuing year. It has been usual to raise a special committee to report on nominations for the Executive Committee, including the Treasurer and Secretary.

Mr. Fleming: We learn from Major Bacon's statement that that work has already been done by his committee, and I have no doubt just as thoroughly as any committee could do it, and I move that the nomination of all officers be referred to the Executive Committee.

The President: It might be desired to retain the present members of the Executive Committee and they would feel great delicacy.

Mr. Fleming: If there is any undue delicacy on that question I will withdraw my motion.

Mr. Bacon: We did not know that it was limited to the officers named, and consequently the nominations we have cover the entire list, but I do not want this Association to consider that we have arrogated to ourselves too much authority.

Mr. Fleming: If it is in order now I would like to call for the report.

The President: It is in order to change the order of busi-The election of officers is the next head after two others. The report of the Committee on Prize Essays is the next one. Only two essays were submitted this year, and I appointed a committee of gentlemen to read and report on them who have for some reason failed to give me their report. Itelegraphed for it this morning, but I have not yet received a reply. Under the by-laws a prize cannot be awarded unless there are more than two competing essays. The chair submits to the Association for its action what shall be done in view of the fact that the report of the committee is not here, and that there are only two essays in competition. The chair will further state that they are the same essays that were presented last year upon the same subject, which have been withdrawn, each by the writer, and perhaps each of them revised. Last year the chairman of the Committee on Prize Essays reported that the essays were of equal merit and that they were unable to make a distinction between them.

Mr. Bacon: I will now renew the motion that was made last year, I think, to divide the prize between the two. I make that motion now whether such a motion was made last year or not.

Mr. Dessau: I would suggest that my brother Bacon must move for a suspension of the by-laws, because the by-laws particularly require that a prize will not be awarded unless there are more than two essays submitted. I will vote for his motion to suspend the by-laws, because these gentlemen have been very much in earnest about the matter; at least, one of them I know has been very faithful and earnest in his efforts to come within the range of the prize, and I think his efforts ought to be rewarded.

Mr. Bacon: I will enlarge my motion, then. I will move

that the by-laws be suspended and that the prize be divided between the two essays, and further that the two essays be published in the proceedings.

Mr. Dessau: I will second that motion.

The motion was carried. (See Appendices Nos. 12 and 13.)

The President: The next order will be the action upon the report of the Committee on Legal Education and Admission to the Bar, which Judge Reese said he would take up in the absence of Judge Kibbee.

Mr. Reese: Mr. Chairman, this bill prepared by Captain Mercer I have read over very carefully, and as you know the whole matter about admission to the bar has been discussed here before two or three sessions of our body, with no result, except that we found out it was very complicated and a very troublesome subject and hard to solve. Now. sir, this is the solution presented by Captain Mercer, and I think it amounts to a very proper and very practical solution of the whole matter.

The report was then read. (See Appendix, No. 14.)

Judge Reese: This bill has some 15 sections. It does not differ from the law now in force as to any material point, except that it requires of the person applying for admission to the bar that he shall have studied one year. The provision is as follows: "That he has enjoyed a preliminary training and experience of at least one year within a period of three years next preceding his admission in some approved law school or college, or in the office of some practitioner of recognized standing and ability."

Now, sir, the material point of divergence from anything that we now know of is that the Act requires that the Judge of the Superior Court shall appoint in each circuit a board of examiners, and that this board of examiners is entrusted with the right to require an examination orally or in writing. I think that the limitations proposed by this statute are very reasonable ones. It is not pressing the matter too far on the poor young men of our country who have to make a living, and it gives much more time to be ready for the great work of our lives.

Now, as to the other feature of this report—that is, a board of examiners who shall meet biennially to hear examinations and to pass upon them—there is, as I can see, a very great im-

provement upon what we have now in this business of admitting young men to the bar. I do not know that I could speak with any authority in cities, but I know how it is done in the country where I practice law. It is done at some odd hour of the court during the session. There is very little time given to it. There is hurried through what is called an examination. It does not amount to a real examination, not only for the want of time, but the attorneys have other business that they are obliged to attend to, and the whole thing really amounts to a very small matter, and it don't amount to any test in the world of any qualification of the young men who apply. This is an advance. Whether it will accomplish all that the committee have proposed, I do not know. I think it will accomplish a great deal. It certainly is a great advance upon the present state of affairs, and of all objections I have heard in our discussions in this thing of examining young men for the bar, I have never heard one that met this proposition as submitted by this committee. I think it is a reasonable mode of examination, and it looks to me that the proper mode of disposing of this thing would be to receive this report, to adopt it and to turn over all this statute that is provided to a committee to prepare for legislation and see that the legislation so far as possible is carried out.

The President: The motion is for the adoption of the report and the appointment of a committee to bring the measures it recommends to the attention of the legislature.

Mr. Bishop: I would suggest that the word "oral" be stricken. It is inconsistent with the balance of the report, which implies necessarily a written examination.

Mr. Reese: I think it is important to retain both features of the mode of examination. Sometimes it may be very important to have oral examination. Parties may get hold of the papers prepared by the examiners and get stuffed and prepare for the occasion. If the board has got no right to go outside of their questions, then a fraud will be perpetrated and there will be no help for it. It seems to be quite important to retain both modes of examination by the board.

The President: There being no motion before the meeting, except the one on the adoption of the report and the appointment of a committee, the chair will put the question.

The motion was carried.

The President: The duty of appointing the committee will devolve upon the next President.

Mr. Dessau: Mr. President, in order that the committee who prepared this report should have the full benefit of their work, I would move that the committee who prepared the report should be requested to present it to the next legislature. I find upon this report the name of a gentleman who will be in the next legislature, Mr. A. T. MacIntyre, jr., who is now nominated from Thomas county, and I have no doubt but what he will take a very great interest in furthering the interest of the bill. It is a right strong committee.

Mr. Cooledge: I move, Mr. President, that Judge Reese be added to the committee.

Mr. Dessau: I will accept the amendment.

The motion was carried as amended.

The President: The next order is the election of officers.

Mr. Bacon: Before that is gone into I will state that the Executive Committee has had referred to it a number of applications for membership. It might be well for the Association to act upon them. I would state that it might be well to take up that matter first in order that the gentlemen who are elected, if any of them are present, would have an opportunity to participate in the election of officers.

The President: This order of business is merely the work of the Executive Committee and subject to change. If there is no objection the chair will consider you in order in bringing up the matter for the election of members.

Mr. Bacon: The following applications have been made, and the Executive Committee have recommended that they be elected members of the Association: Henry D. McDaniel, E. H. Calloway, E. H. Cutts, J. M. Grigs, Dawson, Ga.; Henry McAlpin, Athens, Ga.; Thomas Cobb Jackson, Atlanta, Ga.; E. A. Hawkins, Thomas B. Felder, jr., A. W. Fite, Douglas Wikle.

The President: If those nominations were considered by the Executive Committee outside of the session of the Association, you have the power to elect them.

Mr. Bacon: Very well; we will consider them as elected.

The President: Then these gentlemen will be considered as elected by the action of the Executive Committee. The election of officers is now in order.

Mr. Bacon: Mr. President, the Executive Committee have agreed upon certain names as nominees for the various offices, including the next Executive Committee. I understood the motion that was made covered all of these officers, so I will read them, including the Executive Committee:

President-Marshall J. Clarke.

Vice-Presidents—I. J. C. C. Black. 2. A. S. Clay. 3. C. C. Kibbee. 4. A. T. MacIntyre, jr.

Secretary-John W. Akin. Treasurer-Samuel Barnett.

Executive Committee—P. W. Meldrim, chairman; A. S. Erwin, Washington Dessau, W. H. Fleming, Secretary and Treasurer ex-officio.

Mr. Bishop: I move that the President cast the ballot of this Association for the nominees which have been presented.

The motion was carried.

The President: The chair announces that he has cast the ballot and the officers are duly elected.

Mr. Fleming: I offer the following resolutions:

"Resolved, That the Georgia State Bar Association tenders its thanks to Judge Seymour D. Thompson for the able and learned address delivered by him on yesterday, and that he be requested to furnish said address for publication in the proceedings of the Association.

"Resolved, That the Secretary be directed to transmit to Judge Thompson a copy of these resolutions."

The resolutions were adopted.

Mr. Brown: I want to make a personal explanation. I was not present last year at the annual meeting of the Association, and I did not see until last night a copy of the proceedings. I had been appointed the year before chairman of the Committee on Ethics, and the proceedings leave the matter in a shape that it might appear that I had neglected a duty placed upon me by the Association. When I was appointed upon that committee I was absent in Cuba, where I had been sent by my physician on account of bronchitis to avoid consumption. So soon as I learned of the appointment, I wrote to Judge Clarke then

that I would not be able to serve, but on account of the poorness of the mail service the letter was not received. I remained out of the country until July. Last month a professional engagement carried me to Washington to argue a very important question, the right of separating white and colored persons in different cars. I was absent last month on that account.

## Mr. Akin: I offer this resolution:

"Resolved, That it is the sense of this Association that its annual meetings should be held successively at the several larger cities of the State, and that the Executive Committee be requested to provide accordingly."

We have met here in Atlanta ever since our organization. For my own part I can imagine nothing more delightful than a visit in May to the city of Savannah, or Augusta, or Macon; or to Gainesville or Rome in such a heated term as this. The Executive Committee has the right to set the time, and this resolution merely recites our wishes.

Now, we all know how glad the Atlanta bar was to have us here when we first came—they took us to ride in carriages. We came the next year, but we did not get the carriages, and we have never had them since, and it is more than we could reasonably expect of the Atlanta bar to ride us around every year. But I have no doubt that the Macon, or Savannah, or Rome, or Augusta bar would be delighted to have us and give us carriages, and perhaps something else, if they could get us.

Mr. Bacon: I would suggest an amendment to that. I think our good brother is rather modest in so framing that resolution as to exclude Cartersville. I think this limiting it to the largest cities ought to be stricken out for two reasons: there might be some trouble in the decision of the committee as to which were the largest; and secondly, I think the smaller places would be a little more anxious to get us than the larger ones. I am in favor of the resolution with such amendments as to leave it in the discretion of the committee as to which place it should be. We might sometime want to go to Tallulah, for instance, which is not one of the larger places. I think it should be left entirely discretionary.

Mr. Akin: I will adopt the suggestion.

Mr. Brown: Mr. President, I would suggest that the Executive Committee ought to take into consideration the advisability of changing the time of holding the sessions in relation to the seasons.

I want to say for the Atlanta bar that it is true the first season they did have carriages, and the Atlanta bar was here in force, but the subsequent meetings have been held at such times as that a great majority of the Atlanta bar is away. Nearly every man of the Atlanta bar either has his family away, or is away himself, and therefore the members of the Atlanta bar can show very little attention to the Association. If they will meet in October, we will promise to have carriages and a banquet unless our prohibition friends cut us off from that.

Mr. Akin: I have stricken out the word "larger." Mr. Brown's suggestion is a wise one, and if he thinks it should be embodied in this resolution, I will do so.

The resolution as modified was adopted.

Mr. Akin: I have been requested to move the adoption of the following as an additional by-law. As explanatory of it, I need only to call attention of the Association to the action of yesterday, making the Committee on Legal Ethics a standing committee. In view of that action, it is perhaps necessary to define the duties of that committee, and the following has been handed me with the request that I present it to this body:

The Committee on Legal Ethics shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relation of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best in case any departures from these principles, by members of the bar of the State, come to their notice or are brought to their attention.

Mr. Bishop: I do not believe, Mr. President, we have enough members here to make any change in the by-laws. I think thirty is required.

The President: That relates to changes in the constitution.

Mr. Bishop: I do not wish to be understood as objecting on that ground any way.

The President: There is no requirement other than that the amendment of by-laws shall be acted on at a regular meeting.

The resolution was put and adopted.

Mr. Barnett: Mr. President, I have been requested to move an amendment to one of the sections of the by-laws on the question of grievances. [Reads 4th section of 7th by-law.] I move to amend by inserting after the word "profession," in the third line, the following, "Or the professional conduct of any member of the bar," so it shall read as follows: "Shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of the bar, and the administration of justice," etc.

Mr. Clarke: Mr. President, I move to amend by having it read, "any member of the Association," instead of, "any member of the bar." I question the right of this Association to review the conduct of any person who is not a member.

[At this point Judge Clarke took the gavel at the request of the presiding officer.]

Mr. Hill: Mr. President, it was stated vesterday that as many as twelve of the bar associations had actually taken steps for the disbarment of members of the profession for unprofessional conduct, and I find that in the prosperous associations, the invariable rule is that they have by-laws which provide for actions of that kind. The most prosperous State association is the New York State Bar Association, and Mr. Justice Miller, of the Supreme Court of the United States, uses strong language in regard to the very matter which is now recommended in this amendment to the by-laws. He strongly commends it. The constitution of the New York State Bar Association, or its by-laws, were amended, and so I find a later publication authorizes the committee to proceed against any persons, not only against the members of the association, but any, member of the bar, and in case of complaint to make an investigation, and if they find upon investigation that any member of the bar has been guilty of improper conduct, this committee is authorized to co-operate with any action that may be taken before the courts looking to a disbarment of those members. This same matter I find is provided for by the constitution of the Illinois Bar Association, and is recommended in an address I had the pleasure to refer to yesterday by the new Chief Justice, Mr. Fuller. So all the associations that are prosperous and mean business, and have secured not only professional but public confidence, and have impressed the people of the State that they intend to do whatever that constitution permits them to, to uphold the honor and dignity of the legal profession, and have the machinery by which they cannot simply investigate grievances, but by which they can, upon well-founded complaint, proceed against members of the bar of the State who are guilty of unprofessional conduct.

It seems to me it would be well to so amend these by-laws as to extend its jurisdiction, and make it broad enough to make this Association a movant in proceedings that would affect members of the bar of the State. It amounts simply to a recommendation; there is nothing compulsory about it.

Mr. Brown: It gives a working machine to proceed against a member of the bar, whether a member of this Association or not, who has been guilty of any unprofessional conduct. Any member can move that he be disbarred. Suppose a member of the Atlanta bar is guilty of some outrageous conduct, and there is no one individual who wants to take it upon himself to take it to the Superior Court and move that he be disbarred. If a member of the Atlanta bar, or any other bar in the State of Georgia, is guilty of unprofessional conduct, we have got an institution that will undertake that work and will push it through. I think there ought to be just such a clause as that in this constitution, and not only put there, but enforced whenever a case occurs where it will be proper to enforce it. I am very heartily in favor of it, and I trust it will be carried out.

The motion was put and carried.

Mr. Hill here resumed the chair, Judge Clarke vacating.

The President: Gentlemen, we are under the head of miscellaneous and unfinished business.

Mr. Jenkins: In regard to a suggestion of our worthy and retiring President as to the power of the district Federal Judges, I believe there is no Committee on Federal Legislation, and I believe also that the President, in his address on yesterday, suggested the appointment of such a committee. I think that is a very wise suggestion, and I think there ought to be such a committee appointed. I would therefore move the appointment of a Committee on Federal Legislation, consisting, I will say, of three members—perhaps it would be better to make it five—but I will make a motion for the appointment of a committee of three on Federal legislation if I can get a second to that motion.

The motion was seconded, put and carried.

Mr. Brown: I have a resolution I desire to offer:

"Resolved, That the Committee on Jurisprudence and Law Reform be directed to prepare and present to the next legislature (and urge its passage) a bill to amend the law relating to costs in all courts of record in this

State by adding thereto as taxable costs one dollar for library fund, and that said sum shall be collected as other costs and paid over to the County Treasurer in each county where said cause was tried, and shall be paid out by him upon the order of the Judge of the Superior Court for such law books as the Judge shall select, which books shall be the property of the county."

There is no library association in Georgia, and I have a doubt whether there ever will be. We have tried it. If a law like this had been on the statute-book when the war closed. each of the counties in the State would have had a splendid library; each of the cities would have had a good library; we would have had one here worth \$12,000 or \$15,000. State of Georgia furnishes to the courts a set of its own reports. A fund of the Supreme Court is set apart and placed under the direction of the Supreme Court Judges to a library fund. It is to the interest of litigants that their cases be properly decided, and no lawyer can understand the law without books. It is to the interest of judges and it is to the interest of the county to save time. It seems to me that if this resolution becomes law, that there is no county in Georgia that will not, in a very short time, secure for itself and the use of its court a splendid library. I can understand, of course, how some of the small economists in the Georgia legislature might say this resolution was sought to be enacted for the purpose of buying lawyers books, but I do not think such an objection can be sustained.

It occurs to me this is a thing worthy of our consideration, and if it becomes a law of the State, in a few years it will be of very great service. We are here in Atlanta where we have the library of the State, still we cannot take a book out of the library (and very properly under the rule) and bring it here, and the expense of a law library is enormous.

Mr. Reese: I desire to say in relation to the resolution that I appreciate very sincerely the necessity of legal information at the county court-houses and city court-houses, and everywhere where the law is administered for the aid of lawyers and judges. Very often a little law will settle a great matter, but I do not think that this mode of getting up a library for the use of the lawyers and judges would be acceptable to the legislature. I think the moment that such a law was urged it would create a universal feeling, not of indignation, but of repugnance to the whole thing. It will be said at once that this is nothing but a lawyers' scheme to benefit themselves and to tax the people to get a library for themselves. They would say in the legislature and in the country that lawyers ought to

take it out of their own pockets and subscribe and have a library at the court-house, and if they are not able to do that, to call upon the liberal men in the community to help them. But this does not seem to me to be a legitimate mode of rais-

ing money for that purpose.

I would like to have all the money I could get to build a library in Washington, but we have a very ticklish sort of business to approach the legislature. We have had some experience. We have prepared some bills with great thought and a great deal of labor, and have gone there and submitted it to them, and they would cast it aside as impracticable and not suiting the time and not suiting the disposition of the legislature. I hope the gentleman will withdraw his resolution, because if this tax bill should go along with the other legislation we ask, it will hurt us.

Mr. Dessau: I move to amend by referring the resolution to the Committee on Jurisprudence and Law Reform.

Mr. Brown: I have no objection to that.

The President: The question, then, is in this shape: A motion to refer Mr. Brown's resolution to the Committee of Jurisprudence and Law Reform.

Mr. Dessau: I mean with power in the committee to act according to their discretion either in presenting such a bill or disposing of such a bill.

The resolution was adopted as amended.

The President: Will you elect delegates to the American Bar Association? That has been done sometimes heretofore.

Mr. Thomson: I move that the President appoint the usual number of delegates.

The motion was carried.

Mr. Bleckley: If the order of business is concluded, I beg leave to make an announcement to the Association which is of a personal nature. It is that a distinguished Georgian and'a member of the legal profession is in the city—one whom all Georgians and all lawyers will delight to honor—Mr. Justice Lamar, Supreme Court Justice of the United States. I move he be invited to attend the banquet of the Association this evening.

The motion was carried.

The chair stated he would take great pleasure in extending that invitation.

Mr. Lamar: Mr. President and Gentlemen of the Association: The courtesy extended to me on this occasion from this Association, as gratifying as it is unexpected, touches my heart, and I will give it an immediate acceptance with my thanks. (Applause.)

The annual meeting then adjourned sine die.

# APPENDIX No. 1.

# TREASURER'S REPORT TO THE GEORGIA BAR ASSOCIATION.

ATLANTA, GA., August 7th, 1888.

### CASH ACCOUNT.

		f cash on hand, as per last annual statementived during the present fiscal year, as per schedule	<b>\$</b> 1,225	64
		herewith filed to Oct. 9th, 1888	880	00
		Total	<b>\$2,</b> 105	64
		Less expense account	677	31
	•	Balance on hand	\$1,428	33
1887.		EXPENSE ACCOUNT.		
Aug.	4.	Savannah Morning News, notices	<b>\$</b> 2	00
Aug.	4.	Paid expenses of Judge Cooley's trip		00
Aug.	6.	The Augusta Chronicle, publishing Report of Commit-		
_		tee on Jurisprudence and Law Reform	15	00
Aug.	8.	W. O. Jones, livery stable carriage for Judge Cooley	4	00
Aug.	10.	W. Y. Langford, Janitor	5	00
Aug.	27.	Constitution Publishing Co	7	50
Sept.	2.	A. F. Cooledge, (stenographer)	39	00
1888.				
Jan.	25.	Byrd & Pattillo, publishing annual reports	312	46
Jan.	31.	Postage, circular letters	6	85
Feb.	ß.	Byrd & Pattillo (Binding)	9	00
June	23.	Constitution Job Office, printing Report of Committee		
		on Judicial Administration	•	00
July	23.	Constitution Publishing Co., notices of meeting	-	50
		Salary of Secretary	100	
		Salary of Treasurer	100	00
		Total expenses	\$677	31

## INSTALLMENT ACCOUNT.

The following schedule shows the standing of the account of the Association with each member. The first column shows the amount paid the Treasurer since the last annual statement, and the second column

shows the amount still due the Association, including the dues for the present year, to-wit, from July 1st, 1888, to July 1st, 1889, payable in advance:

Adama S D	• 5	ω.	•	
Adams, S. B.		00	•	
Aiken, J. W	9	w	15	00
Alexander, J. H				00
Anderson, Clifford			10	
Anderson, C. L.	15	00		00
Arnold, Reuben		00	9	w
Arnold, F. A	ð	00	10	00
Ashley, D. C	-	00	10	00
Barnes, G. T.	_	00		
Barrow, Pope	_	00		00
Basinger, W. S	_	00	Э	00
Bacon, A. O	_	00		
Bartlett, C. L		00		
Barnett, Samuel	5	00		•
Berner, R. L			15	
Bell, H. P	_			00
Billups, J. A	5	00		00
Bigham, B. H			5	00
Bishop, J., Jr		00		
Bleckley, L. E		00		
Black, J. C. C	5	00		
Boynton, J. S				00
Bower, B. B				00
Brantley, W. G	10	00	_	00
Blandford, M. H.			15	00
Brandon, Morris			15	00
Broyles, E. N			15	00
Brown, Julius L	10	00		
Bush, Isaac A	5	00		
Butler, E. W			15	00
Calhoun, W. L			5	00
Calhoun, Patrick	10	00		
Cameron, H. C			10	00
Callaway, E. H			5	00
Chisolm, W. S	. 15	00		
Cheney, W. T			10	00
Cheney, B. B			15	00
Chappell, T. J		00	15	00
Clarke, M. J		00		
Clarke, J. T		00		
Cooledge, A. F		00		
Colley, F. H			15	00
Cozart, W. H			10	00
Cobb, A. J		00		

TREASURER'S REPORT.			45
Colville, Fulton			\$10 00
Cox, A. H.,			15 00
Cotten, J. A.			10 00
Crovatt, A. J	\$5	00	5 00
Crawford, C. P.	<b>V</b> O	•	10 00
	10	00	10 00
Cunningham, H. C.		00	
Cutts, E. H.		00	
Dabney, W. H		00	
Davidson, J. S		00	
Davidson, Wm. T	5	00	
Davis, B. M			15 <b>0</b> 0
Davis, A. H	5	00	
Dell, J. C	10	00	5 00
Denmark, E. P. S			10 00
Denmark, B. A	5	00	
Dean, L. A			15 00
DeLacy, J. F			5 <b>0</b> 0
Dessau, Washington	5	00	
Dorsey, R. T	5	00	
Dubignon, F. G		00	
Dunlap, S. C	•	•	15 00
Dubose, Dudley			10 00
Echols, J. W			15 00
Ellis, W. D	15	00	
Erwin, R. G		00	
Erwin, A. S.		••	10 00
Estes, Claud	10	00	5 00
Estes, A. B., Jr		00	15 00
Falligant, Robt	-	00	1
			5 00
Featherstone, C. N		00	
Felder, Thos. B. Jr	Ð	00	
Fite, A. W	_		5 00
Fleming, W. H	5	00	
Foster, F. G			5 00
Foute, A. M	10	00	
Garrard, L. F	5	00	5 00
Ganahl, Joseph	5	00	5 00
Glenn, J. T	5	00	
Goodyear, C. P			5 00
Goode, S. W	5	00	
Grimes, T. W	5	00	
Green, J. W			15 00
Gregory, Walter	5	00	<del>- •</del>
Griggs, J. M	,		5 00
Gustin, G. W			5 00
Guerry, DuPont	5	00	
Grow, S. E. (resigned)		00	
/ /	10	<del></del>	

Hammond, W. R			<b>e</b> 5	00
Hall, Jno. I			•	00
Hammond, N. J.		00	U	w
Hammond, W. M		• •••	10	00
Harrison, Z. D		00	10	w
Hammond, A. D	•	00	15	00
Haygood, W. A	ĸ	00	10	w
Harley, J. A		•••	15	00
Hammond, T. A		00	10	•
Hansell, A. H		00	10	00
Hawkins, E. A		00		00
Harbison Robt		00	5	00
Hill, W. B.		00	·	00
Hill, H. W.	•	00	5	00
Hill, B. H			15	-
Hill, C. D.				00
Hitch, S. W			10	
Hillyer, Geo				00
Howell, G. A	5	00	U	w
Hopkins, J. L	10		5	00
Holton, G. J.		00	· ·	•
Hood, Arthur Jr		00	5	00
Hollis, B. P.	Ü	00	_	00
Hollman, J. T			_	00
Jackson, Henry	5	00	•	•
Jackson, W. E	·	••	5	00
Jackson, Thos. Cobb	5	00	·	•
Jenkins, W. F	Ū	•	15	00
Jenkins, J. C	5	00		•
Johnson, W. G	Ŭ	•	15	00
Johnson, Harvey	15	00		•
Johnston, Richard		•	5	00
Jones, J. J	10	00	. 5	
Jones, C. C. Jr		00	•	
Kay, W. E		00		
Kibbee, C. C.		00		
King, A. C			5	00
King, Porter	5	00	_	
Kingsberry, S. T		00		
Kiddoo, W. D	•		5 (	00
Lanier, R. S	5	00		
Lawson, T. G	5		5 (	00
Lawton, A. R	5			
Lawton, A. R., Jr	5			
Latham, T. W	15		5 (	00
Lamar, J. R	15			-
Levy, L. C	5			
Lester, R. E	5			

Levy, S. Yates			<b>\$</b> 15	Δ0
Lewis, H. L	45	00	410	w
Little, W. A	φU	w	15	00
Lochrane, Elgin				00
Loring, C. A	5	00	-	00
Inmakin I U	0	w		00
Lumpkin, J. H			-	00
Lumpkin, E. K				00
Lyons, R. F	_	00	10	w
Martin, Jno. H	_	-		00
Matthews, H. A	15	w		00
Martin, E. W				00
Martin, J. H.		40	10	w
Mercer, Geo. A		00		
Meldrim, P. W		00		
Miller, F. H.		00		
Miller, W. K	Đ	00	. 15	^^
Milledge, Jno	_		15	00
Minis, A., Jr	5	00	4.5	^^
Mitchell, J. B	_			00
Mobley, J. M	5	00		00
Morris, Sylvanus	_	_	15	00
Mynatt, P. L.		00		
McAlpin, Henry	5	00		
McCord, C. Z				00
McDaniel, J. C			15	00
McDaniel, Henry D	5	00		
McIntyre, A. T., Jr			5	0
McLendon, S. G			15	00
McNeil, J. M	5	00		
McWhorter, H	10	00		
Newman, W. T	5	00	5	00
Newman, E	5	00		
Neel, J. M	5	00		
Newman, J. C			15	00
Nisbet, Jas. T	5	00		
O'Brien, F. M			15	00
Park, J. W			5	00
Pate, A. C			15	00
Palmer, H. E. W			5	00
Pace, J. M			5	00
Patterson, R. W			15	00
Payne, J. C	10	00		
Pe body, Jno	10	00	5	00
Peabody, F. D	15			
Phinizy, Leonard	10	00		
Proudfit, Alex	15			
Price, W. P			5	00
Pressly, C. P				00
= -			_	

Reese, H. M. (resigned)	<b>\$</b> 5	00		
Reese, M. P	5	00		
Rhett, W. H			\$5	00
Roney, H. C			15	00
Rountree, D. W			15	00
Rosser, L. Z			5	00
Rowell, C			10	00
Ryan, L. C			15	00
Sessions, W. M	5	00		
Seidell, C. W	5	00		
Shubrick, E. T			15	00
Shumate, I. E			5	<b>0</b> 0
Smith, E. A.:	10	00	5	<b>0</b> 0
Smith, Burton			5	00
Smith, Hoke			5	00
Smith, James M			15	00
8mith, C. C			15	00
Smith, Alex. W			5	00
Spencer, S. B			15	00
Spence, W. N	5	00		
Stubbs, J. M	15	00		
Stanford, L. L			15	00
Steed, C. P	15	00		
Sweat, J. L	5	00	5	00
Thomas, L. W			15	00
Thomas, Geo. D	5	00		
Thomson, W. S			5	00
Tompkins, H. B	10	00		
Trippe, R. B	5	00		
Turner, W. A	10	00	10	00
Turner, H. G			5	00
Turner, J. S			15	00
Turnbull, W. T			10	00
Tye, J. L			15	00
VanValkenberg, J. E			5	00
Wade, Ulysses P	5	00	5	00
Walton, B. H			15	00
Weil, Sam'l	10	00		
Westmoreland, T. P	15	00		
Whitfield, Robt			5	00
Whitehead, J			5	00
Williams, E. T			15	
Wingfield, W. B		•	15	-
Wikle, Douglas				00
Worrill, W. C	10	00	•	
Womack, E		00		
	_			
Total\$	880	00	\$ 1,260	00

Under the resolution passed by the Association that members elected during a fiscal year between the annual meetings, should not be liable for dues during the year of their election, a number of members have claimed rebate upon the amount charged against them. The report for this year will be found corrected in these cases.

The names of those members of the Association who are in arrears for four installments are not included in the foregoing list. The Secretary has been requested to erase their names from the roll of members.

The charge for dues unpaid against Mr. W. M. Heyward, of Savannah, made in the last report was an error. Mr. Heyward had resigned prior to the accruing of the dues, as I am informed by the Secretary, and therefore owed nothing.

# TOTAL AMOUNT OF ASSETS.

Balance of cash  Dues of members, as per above statement	
Liabilities, none.  Total amount of assets	
Respectfully submitted by the Treasurer, with the vouci	

Examined and approved, this August 6th, 1888.

A. O. BACON, Chairman Ex. Committee.

# LIST OF MEMBERS WHOSE NAMES ARE TO BE ERASED FROM THE ROLLS; BOTH BY RESIGNATION AND BY FAILURE TO PAY DUES.

	PAREOTER TO THE DOES.
Angier, E. A.	James, J. S.
Best, E. F.	Jenkins, H. A.
Bell, G. L.	Jordon, G. W.
Bryan, G. W	Jones, A. R.
Camp, Felix.	Lawton, J. L.
Carlton, H. H.	Lester, G. N.
Candler, J. S.	Lester, D. P.
Clay, A. S.	Lindsey, J. W.
Collier, W. E.	Lofton, W. A.
Eason, Thos.	Mabrey, G. B.
Ely, R. N.	Maddox, J. W.
Estes, J. B.	Mershon, M. L.
Eve, W. F.	Miller, A. L.
Gartrell, L. J.	Moore, W. K.
Goetchius, H. R.	Murphy, A. A.
Gray, J. R.	McCalla, C.
Hardeman, Isaac	Pierce, R. L.
Harrell, D. B.	Pope, D. H.
Hardeman, Saml.	Reid, S. A.
Hardeman R. V.	Reese, Oscar

Riley, A. C.
Roberts, D. M.
Sandford, D. B.
Sims, A. B.
Sims, J. B.
Stewart, J. D.
Tate, F. C.
Thomas, J. A.
Thomas, G. E., Jr.,

Underwood, J. W. H. Van Epps, Howard Verdery, E. F. Vason, D. A. Warwick, G. W. West, C. N. Willingham, Thos. Wimberly, W. M. Wright, Boykin

The following gentlemen have resigned:

F. T. Lockhart, W. M. Heywood, S. E. Grow, Shelton Sims, J. S. Sims. C. D. McCutchen, H. M. Reid, M. DeGraffenreid, Ivy F. Thompson,

# APPENDIX No. 2.

# BAR ASSOCIATIONS.

# ADDRESS

Delivered at Atlanta, Georgia, August 7th, 1888,

BY WALTER B. HILL.

PRESIDENT OF THE GEORGIA BAR ASSOCIATION.

Bar associations are as old as the English bar. Who does not recall the glowing eulogy of rare Ben Jonson? "The inns of court," he exclaims, "the noblest nurseries of humanity and liberty." By "humanity" he meant, of course, "the humanities," a term pregnant with meaning, as expressing the humanizing or civilizing influence of polite learning. The old poet's tribute to these colleges of the law, these earliest associations of the bar, recalls Hallam's fine allusion to those lawyers who "scatter the flowers of polite literature over the thorny brakes of jurisprudence." These words were vividly brought to my mind a few days since on reading the address for 1887, of Mr. (as he was styled in the Report) Melville W. Fuller, as President of the Illinois State Bar Association. Citations from Cicero, Frederic Harrison, Coleridge, Macaulay, Scott, Gibbon, Bentham, Austin and Schlegel, embellish it, along with allusions to Reeve and Maine and Kent and Holt and Buller and Mansfield. In its union of simple strength and literary charm, I was reminded of Wirt's eulogy of William Pinkney, that he "wielded the club of Hercules adorned with flowers."

ANTIQUITY AND ORIGIN OF BAR ASSOCIATIONS.

The inns of court! I dare not trust myself to enlarge upon this tempting theme. The history of the circumstances under which the homes of chivalry, the Middle and the Inner Temple and

Grav's and Lincoln's Inn became a great "plant" for a law university and bar association—the treasures of anecdote, incident and learning connected with these famous places, would of themselves more than suffice for an hour's discourse. In ancient times the lawvers who inhabited these hospices brought their wives within the walls, and the barristers, the historian tells us, found the pleasures no less than the business of their existence within the bounds of these honorable societies. "The rising barrister brought his bride in triumph to his chambers. In those rooms she dispensed graceful hospitality and watched her husband's toils. The elder of her children first saw the light in those narrow quarters, and frequently the lawver over his paper was disturbed by the uproar of his heir in an adjoining room." alas, the whole truth must be told, and it appears in Dugdale's Origines that "in the 23rd reign of Elizabeth, on the 30th of January, there was an order made that no laundress, nor women called victuallers, should thenceforth come into the gentlemen's chambers of this society until they were full forty years of age, and not send their maid servants of what age soever in the gentlemen's chambers upon penalty, for the first of him that should admit of any such, to be put out of Commons; and for the second, to be expelled from the House." If we are pained to note the necessity of such an order as evidence of vice, we must yet remember that the suppression of it by such vigorous measures demonstrates the supremacy of a sterner virtue.

"I don't know," says Thackeray, in his chapter in Pendennis on the Knights of the Temple, "whether the student of law permits himself the refreshment of enthusiasms or indulges in poetical reminiscences as he passes by historical chambers, and says, 'Yonder Eldon lived—upon this site Coke mused upon Littleton. Here Chitty toiled; here Barnwall and Alderson joined in their famous labors; here Byles composed his great work on Bills, and Smith compiled his immortal Leading Cases.' But the man of letters cannot but love the place which has been inhabited by so many of his brethren or peopled by their creations, as real to us at this day as the authors whose children they were."

It is an interesting inquiry how far that fraternity, that esprit du corps, which has always been one of the marked characteristics of the bar, and makes lawyers always ready to act upon the principle of association, may be the outgrowth of the ancient system of legal training in England, which brought lawyers together

around the same table, and which grouped them together almost with the closeness of family life. Whatever be the source of the feeling, certain it is that the bar always lays completely aside its antagonisms after forensic contests. It is a curious anomaly that musicians who are concerned in the production of harmony, are the most jealous and antagonistic of all co-laborers, while lawyers who are popularly supposed to be busied with matters of strife, are the most fraternal of men, exceeding in their generous recognition of mutual worth and intellectual prowess even the reverend clergy.

It is not surprising to find that there is in London what we may call strictly a bar association. Its name is the Incorporated Legal Society. It has no need to take jurisdiction of the subject of legal training and admission to the bar, for that was fully provided for by the Council of Legal Education, the modern survival of the Inns of Court. But it has done a noble work in the line of law reform, and doubtless it is largely due to its exertions that Lord Coleridge, on his visit to this country a few years ago, found himself compelled to express surprise at the fact that his conservative nation had distanced ours in law reform; that the courts of England went faster than the courts of the United States: to plead before an American audience for the doctrine that the substance of right is more important than the science of statement. and to recommend that our government should set apart a portion of its great Western reserve as a "pleading park," where writs and forms long since abolished in England, but still in vogue here, might after a time be stored away, so that the ghosts of old lawyers might delight therein when they revisit this sphere in the pale glimpses of the moon.

# NUMBER AND CHARACTER OF MODERN ASSOCIATIONS.

In the United States there are two National Bar Associations. First and foremost, the American Bar Association, organized in 1878. It is worthy of note in our annals, that General A. R. Lawton, of our Bar Association, was one of the signers of the call which led to the organization of that important body. The other has been recently organized at Washington, and is called the National Bar Association. The object of the latter, as claimed by its promoters, is not to supersede or interfere with the older American Bar Association. Mr. James O. Broadhead, of St. Louis, who was

the first President of the American Bar Association, has also been made first President of this National Bar Association. The latter has been organized upon the assumption there is work enough for both, and that it will have certain advantages by reason of being a purely representative body.

In addition to these organizations of national scope there are, according to the list published in the Tenth Annual Report of the American Bar Association, twenty-five State associations, four territorial associations, two in the District of Columbia, and ninety-three county and city associations. Most of those in the class last mentioned are formed chiefly for maintaining libraries.

# OBJECT AND SCOPE OF THIS PAPER.

After choosing the subject for this address. I resolved to obtain the constitution and by-laws and publications of these different associations, in order that I might see their declared objects and purposes, and then to send a circular letter to each secretary with inquiries as to what work had been done and what had been actually accomplished by each organization. This was prompted by the hope that the objects proposed and the results achieved in other places might be found suggestive and helpful to us, and that the publication of a monograph on this subject would be useful to other associations by enabling each one to reap the benefit of a "congress of ideas." However, I failed to realize how large a contract I had undertaken, and how much time would be required for the examination of the great mass of documents, pamphlets, books, etc., received. I found myself compelled either to abandon my purpose of preparing for you a written discourse, or else to forego much of the investigation which I had proposed to make. Of course, the investigation and the facts were more important than any style in which they were to be clothed, so I chose to sacrifice form to substance. In view of the dilenma just stated and of the fact that we have two failures in our programme to-day, I wish to read, and thereby incorporate into the proceedings of our Association, what seems to me to be a very admirable statement of Mr. Phelps when he found himself in a similar situation. I think it ought to be taken as a rule of guidance by all our members who find themselves in such an emergency. Beginning his address upon Chief Justice Marshall, before the American Bar Association, he said:

"I had hoped to have offered you this morning what you may perhaps regard as due to the occasion, a written address. Circumstances not fore-

seen when I accepted the invitation of your committee, have placed that preparation out of my power, and have reduced me to the necessity either of

appearing before you without it or not appearing at all.

"I should have accepted the latter alternative, if I had felt myself quite at liberty to disregard such an engagement, and if I had not felt so much solicitude for the success of this our first annual meeting, that I was reluctant to have any of its announcements to fail. It seems to me that if these meetings are to succeed, we should regard such invitations somewhat as politicians profess to regard nomination for the Presidency. not supposed to be sought, but not under any circumstances whatever to be declined.

"Allow me one word further on this subject. While we shall always listen. I am sure, with greater pleasure and advantage to the elaborate preparation that produces such admirable papers as we heard yesterday, in the address and the essays that were read to us, I hope that the precedent will not be established among us that such preparation is indispensable.

"We all know how difficult in our busy lives it is at all times to command it. I trust, therefore, we shall always feel at liberty when we are fortunate enough to have anything to say, and to be asked to say it, to address each other in the simple, unpremeditated style that prevails in courts of justice.

"In other words, if gentlemen cannot always redeem their obligations in gold, let us have the silver, even at ninety-two cents on the dollar; it is much better than total repudiation."

#### THE AMERICAN BAR ASSOCIATION.

In the comparison which will be instituted between the different associations I shall use, as a basis, the declared objects of the Georgia Bar Association, to-wit:

"To advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia."

The declared objects of the American Bar Association are the same as those of most of the State associations, except, of course, its constitution embraces the clause, "to promote uniformity of legislation throughout the Union." It is provided in the by-laws of this association that the President shall open each meeting with an annual address, in which he shall communicate the most noteworthy changes in the statute law in the several States and by Congress during the year.

This is an admirable provision. The result is to bring before the association, annually, the wide divergencies in State legislation—divergency so extreme as to remind one of Pascal's saving. "that three degrees elevation of the pole reverses the whole of jurisprudence." or Voltaire's declaration that the traveller through portions of Europe "changed the laws to which he was subject as often as he changed horses." The immense labor entailed upon the President by this provision of the by-laws has been each year faithfully discharged. Merely to recall the names of the distinguished gentlemen who have filled this office, James O. Broadhead, Benjamin H. Bristow, Edward J. Phelps, Francis F. Kernan, Alexander R. Lawton, Cortlandt Parker, John W. Stevenson, William Allen Butler, Thomas J. Semmes and George G. Wright, suggests at once the great value of these annual summaries of legislation. A number of State associations (among others, Alabama, Tennessee and Missouri.) have copied in their by-laws this feature of the American Bar Association. The result has been, I think, a distinct loss to the State associations. They have no machinery by which the President can obtain the necessary information. (The American Bar Association has a local council in each State on whom the President can call for assistance.) Hence, with a few notable exceptions, the President's address has been returned "non est inventus" at the annual meetings.

The National Bar Association, in the statement of its purposes, differs only from the American Bar Association in a somewhat more explicit declaration of its objects with reference to the unification of legislation. It mentions the subjects which are believed to be matters of common interest, and names the "law of descents, of wills and conveyances, of marriage and divorce, of limitations of actions, for the settlement of estates, the laws affecting comity between the States, the extradition of criminals, those concerning commercial paper," etc.

By a comparison of the constitutions of the various associations, a "composite photograph" of them may be obtained. I will be pardoned, I am sure, in this presence, if I take it upon myself to point out certain points of superiority in the organic law of our own Association.

The first of the declared purposes in nearly all of the constitutions is

# I. TO ADVANCE THE SCIENCE OF JURISPRUDENCE.

This is, perhaps, a glittering generality. It is not perceived how the bar associations can advance the science of law, except through the learning of such contributions to legal literature as may be secured and published through their instrumentality.

There is one way by which in our State we may as individuals, if not as an Association, advance the science of jurisprudence. In the absence of such requirements for admission to the bar as would foster schools of law, the members of the bar are the tutors of the young men who are coming into the ranks of the profession. We can insist, in our instruction of them, that the law is a science, and that the mere ability to answer the questions propounded in the perfunctory examinations "in open court", ought not to satisfy an honorable ambition. We can give them at least some insight into the progress that is being made towards the scientific statement of the law. This progress has been finely indicated in an address by Judge Oliver Wendell Holmes.

"But Story's simple philosophizing has ceased to satisfy men's minds. I think it might be said with safety that no man of his or the succeeding generation could have stated the law in a form that deserved to abide, because neither his nor the succeeding generation possessed, or could have possessed, the historical knowledge—had made or could have made the analysis of principles which are necessary before the cardinal doctrines of the law can be known and understood in their precise contours and in their innermost meanings.

"The new work is now being done. Under the influence of Germany, science is gradually drawing legal history into its sphere. The facts are being scrutinized by eyes microscopic in intensity and panoramic in scope. At the same time, under the influence of our revived interest in philosophical speculation, a thousand heads are analyzing and generalizing the rules of law and the grounds on which they stand. The law has got to be stated over again, and I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago."

We can do a further service by a judicious iconoclasm in regard to the Blackstone fetich. Blackstone's Commentaries have been long ago discarded in the law schools of England, but they have a certain utility for students of law in our State, in the fact that they exhibit the common law of England as it existed about the time of our adopting act, better than any other one book presents it. But while we recognize this accidental element of value, and while we can admit the real excellence of Blackstone's statement of the principles of the common law, surely we ought at the same time to let it be known that Blackstone's definitions and divisions of his subject—his discussions of the general principles of law and government—are the laughing stock of English scholars and jurists.

The science of law is not to be despised by your so-called practical lawyer. In Rabelais, the hyperbollically ludicrous masks many truths, and there was much shrewd sense in Pantagruel's satiric description of French lawyers: "Seeing that the law is excerpted out of the very middle of moral and natural philosophy, how should these fools have understood it, who, par Dieu, have studied less in philosophy than my mule."

A second object declared in many of the constitutions (and perhaps intended by some of them as an equivalent phrase to that above mentioned) is

# II. TO PROMOTE REFORM IN THE LAW;

or, as some of them read, "to promote improvements in the law."

The successful work done in England by the incorporated Law Society of London, amply warrants the associations in this country in similar undertakings. The "Calender" of that society for 1881 (p. 34) says:

"The most cursory glance over the Public Statutes of the last forty years, and the Orders and Rules which have followed in their wake, will suffice to show that the exhaustive consideration of current measures, and the preparation of practical criticisms and suggestions, have represented no mean expenditure of labour. The Society's existence has been passed in stirring legal times, and its attention has ben turned to a succession of vast changes in every department of our system of jurisprudence. The Common Law and Chancery Procedure Acts, the County Courts Acts, the Bankruptcy Acts, the Judicature Acts, these, and many hundreds of other Statutes only secondary in importance to them, have come under its consideration. Nor must it be forgotten that the Society has been conspicuously represented upon the Royal Commissions, which have preceded nearly all of these great legislative efforts, by members of its body appointed, as such, to take part in the deliberations of those Commissions.

A third object stated in most, if not all, of the constitutions is

# III. TO PROMOTE THE ADMINISTRATION OF JUSTICE;

as some read, "to facilitate the administration of justice." The constitution of the Bar Association of the City of Boston uses this language, "To make the practice of the law efficient in the administration of justice."

Quite a number of the associations use these words, "To increase the usefulness of the profession in the administration of justice," or in "promoting the administration of justice."

In view of the relation of the bar to the administration of justice, and the important function of lawyers as officers of the court, it is not too much to say that the associations could not demonstrate their raison d'etre without undertaking and accomplishing this cardinal object in their charters.

Another clause invariably found in some form is

# IV. TO UPHOLD THE HONOR OF THE PROFESSION OF THE LAW.

Some constitutions read "the honor and the integrity of the profession of the law." Others read, "Increase the usefulness of the profession in promoting the administration of justice." Others read, "Elevate the standard of integrity, honor and courtesy in the profession." In Kansas, the declared object is, "The elevation of the standard of professional learning and integrity so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice."

Other associations go somewhat more minutely into the method by which they propose to uphold the honor and dignity of the profession of the law. For instance, the bar associations of some States declare as one of their purposes, "To encourage a thorough and liberal legal education." That of Connecticut, "To uphold and improve the standard of professional qualification." Of Louisiana, "To elevate the standard of admission."

Some constitutions use these words, "To insure conformity to a high standard of professional duty." Others there are which go a step further and declare as one of their objects, "That they will undertake the work of prosecuting and disbaring all unworthy members of the profession."

The Monmouth County Bar Association of New Jersey imposes the following duties upon its Committee on Legal Ethics:

"It shall be the duty of this committee to institute and carry out all measures necessary for the maintenance of a high standard of professional integrity and honor, by opposing the admission to the bar of incompetent, dishonest and immoral persons, by instituting steps for the expulsion from the bar of members guilty of unprofessional, immoral or dishonest conduct, either towards their clients or towards other members of the bar, or society at large. It shall also be their duty to consider any maladministration of justice, and to report to the association what steps should be taken to correct it."

There are other associations which provide machinery, not only for disciplining their own members, but also for instituting proceed-

ings against any lawyers who are guilty of unprofessional conduct. For instance: The Chicago Bar Association provides for a committee of inquiry, "which shall be charged with the duty of investigating all misdemeanors, and every breach of professional conduct on the part of any member of the bar practicing the profession of the law in the city of Chicago; and also of investigating any improper conduct of any officer or person engaged in the administration of justice in said city, which conduct shall, in the opinion of such committee, tend to the obstruction of justice; and also of investigating any abuses which now or shall hereafter exist in the administration of justice in said city."

Another declared object, in which nearly all the associations agree, is

# V. TO ESTABLISH CORDIAL INTERCOURSE AMONG THE MEMBERS OF

As some of the constitutions read, "to cherish a spirit of brother-hood among its members."

We who realize that the old days of circuit practice with its social intermingling are gone and going, ought to hail the existence of these associations as the only sort of substitute provided in these modern times for "the tender grace of a day that is dead."

Some of the associations go beyond these objects which have been mentioned, and in quite a number of the charters of the smaller associations we find these words:

"To supervise the conduct of members of the bar, and of all persons connected officially with the administration of the law, or in charge of public records, and to institute, in case of any breach of duty on their part, such proceedings as may be lawful in respect thereto; to protect the bar and judicial tribunals and officers and members from invasions of their rights." Many others add "to found and maintain a law library."

Different verbiage is found in other constitutions. The Indiana State constitution states that one of its objects is, "to give expression to deliberate and well-considered opinions of the legal profession upon matters whereon its members may properly act as a body." It also states that one of its objects is, "to co-operate with the American Bar Association in the purposes for which it was organized." The latter clause, I think, should appear in all the constitutions.

There is one association which, although it is domiciled amid "the chilling regions of thick-ribbed ice," has

# BLOSSOMED OUT IN TROPICAL LUXURIANCE.

One would not be surprised to find an institution of this kind fostered by the warm blood of the South, but it is like finding a rose in an arctic region to read the record of the Grafton and Coos Counties Bar Association. It seems that two counties of New Hampshire have met in wedlock, and this is the product of their union:

"Its objects shall be to promote the honor and dignity of the bar, good fellowship among its members, to elevate its standard in the public confidence with a view of producing and exercising such an influence in the community as may properly come from the members of the legal profession, to secure the uniformity, consistency and integrity of the laws of the state, written and unwritten, in connection with intellectual, social and physical enjoyment of its members and their families."

This devotion to the physical enjoyment of the members' families recalls all of the generous traditions of the bar. One of these traditions has been preserved by Mother Goose:

"Tommy Daws, a man of laws, Sold his bed and slept on straws, Sold the straws and slept on grass To give his wife a looking-glass."

The "connection" between the "uniformity, consistency and integrity of the laws of the State of New Hampshire," and the "physical enjoyment of the members of the Grafton and Coos County Bar Association and their families," is not very easy to trace, unless one calls to his aid the doctrine of the German metaphysician that all things in the universe are related (if we can only find it out). But certain it is that this association does not allow any skepticism as to this "connection" to interfere with the "physical enjoyment." Accordingly, we find that they give dinners and arrange excursions and have picnics and clam-bakes. It seems that the speaking on these occasions is thrown open to the entire public, and one would think that the public would be on hand in view of some of the toasts which are published in the proceedings. Who can doubt that speeches on these sentiments set the table (and the public) in a roar?

"Our Profession: Brought forth in the Garden of Eden; purified by the flood; adorned by the world's best genius; honorable, dignified and indispensible; it has reached its highest state of perfection in Coos and Grafton counties."

"Politics: That universal laboratory where subtle alchemists make statesmen out of almost anything; where gold and brass are synonymous terms; that interesting labyrinth whose tortuous windings surpass the understandings of the good."

The next is a toast which Lord Eldon would have drunk with his ninth pot of porter, or Lord Stowell would have welcomed at one of those dinners which he declared "lubricated business":

"Gastronomy: The science of sciences, older than the constellations and not yet perfect; the magic art which reveals secrets and leads men captive; the common bond of sympathy between lawyers, doctors, tramps and clergymen."

The minutes of one meeting conclude as follows:

"The post-prandial exercises were interspersed with songs by members of the bar, with Major I. W. Drew of wide-spread musical fame as director."

The printed volumes of the proceedings of this association are interspersed with poems. It is quite evident that these New Hampshire brethren know how to unbend. May they live long and prosper! No other association has as good a time as they. No other association with a jurisdiction of similar extent has done such thoroughly creditable work or published such interesting reports. Finding this warm-hearted brotherhood in a northern latitude, and realizing that the fitness of things (if fitness is to be tested by popular prepossessions) would locate it in the South, I have decided to hold all my conceptions of Southern hospitality and Northern reserve subject to revision.

# NEGATIVE DEFINITIONS-" POLITICS."

There are only two associations which, in the declaration of their purposes, undertake to tell us what they are not to do. One is the Bar Association of Cincinnati which declares: "It shall not be a part of the business of the association to discuss or take action upon questions of politics or religion."

The constitution of the New Mexico Bar Association declares: "The association shall not endorse or recommend any person for any official position."

Not all of the associations are so industrious to steer clear of matters political.

The Secretary of the Wickam County Bar Association (Pennsylvania) writes that "it elected its candidate to the supreme

bench." The Association of the Bar of New York City has a committee on judicial nominations. The Cincinnati Bar Association has also interested itself in the election of suitable candidates for judicial position.

The only sharp difference of opinion that I have discovered in reading the minutes of the associations, is found in the proceedings of the State Bar Association of Wisconsin. It grew out of this very matter. It seems a large majority of that association proposed to nominate a candidate for a judicial office, and thereupon two of the members withdrew, stating that they could not co-operate with the association. The association, however, went forward and made a nomination. It is safe to predict that the Bar Association of Georgia will not make any mistakes on this line.

#### MACHINERY.

There is a great similarity in the machinery by which these associations provide for the execution of their purposes. The usual committees are as follows: (1) On jurisprudence and law reform; (2) on general administration and remedial procedure; (3) on legal education and admission to the bar; (4) on professional ethics; (5) on grievances; (6) on memorials; (7) on membership; (8) executive committee; (9) committee on publication; (10) a committee on library; (11) on fee bill. Some associations have a committee on inter-state law, a committee on federal legislation, and a committee on legal biography. You will recognize that we have no committees corresponding to the three last mentioned.

One characteristic feature of the associations, fortunately common to nearly all of them, is that they very carefully guard admission to membership. The executive committee of our Association, to which committee is entrusted the vital matter of passing on requests or nominations for membership, have had the back-bone to reject several applicants. The secretary of one of the associations writes me, "There are some members of the bar who cannot gain admission into our association." A zealous, conscientious and fearless scrutiny of the qualifications of persons proposed for membership is of supreme importance.

# THE SURVIVAL OF THE FITTEST.

I have already stated the number of associations which appear to be in existence according to a table in the 10th Report of the American Bar Association. My correspondence with them has developed the fact that quite a number are civiliter mortuus.

Among the State associations named in the catalogue, those of Maine and Iowa did not survive beyond the year of their organization. The theory that prohibition reduces the law-breaking tendencies of men to such an extent that the vigor and prosperity of the legal profession are affected, has been suggested as an explanation, but I will not press that theory. Not much more fortunate were the State associations of Connecticut, Minnesota, North Carolina and New Jersey. The State associations of Indiana and Kentucky lived several years and did good work—but now deserve only an obituary. Florida is to be added to the list given in the American Bar Association report. Those which are in active existence and evidence the fact by annual publications are the State associations of Alabama, Arkansas, Colorado. Florida, Illinois, Kansas, Mississippi, Missouri, New York, Ohio, South Carolina, Tennessee, Texas and West Virginia.

My correspondence also disclosed the fact that quite a number of the local associations which are grouped as bar associations are chiefly library associations. It seems that in Massachusetts and Pennsylvania, and perhaps in other States, the members of the bar can organize themselves into a law library association, in pursuance of a general law, and where this is done a part, or all, of the funds coming into the county treasury from forfeited recognizances and fines in criminal cases are devoted to the purchase of law books. In some counties in these States the fund reaches \$3000 or \$4000 a year.

# LEADING QUESTIONS.

It has already been stated that I sent a circular letter to the secretary of each association named on the list. The object was to ascertain how far the association had actually accomplished the purposes announced in their constitutions. The following were the interrogatories propounded:

- (1) When was your association organized? How often are your meetings held? When are your meetings held? Where are your meetings held?
- (2) What publications has the association made? Has the association a library?

(3) Besides eating an annual dinner, what work has the association accomplished?

Has it suggested or secured any legislation? Has it raised the standard of the profession?

(4) To what extent is the association supported by the bar of your city, county or State, as the case may be?

In reply to this circular letter, sixty-eight replies were received. A list of the associations whose officers responded will be found in Appendix "A."

It will be seen from this list (which shows the date of organization of each association), that the Law Association of Philadelphia easily outranks all the rest in antiquity. It was organized in 1814. Several of the county associations were organized between the years 1841 and 1856. All the State associations have been organized since the war.

#### MEETINGS.

The replies to the first inquiry show that the State associations hold an annual meeting. The few which attempted quarterly or bi-ennial meetings did not succeed in securing good attendance at these frequent sessions. The favorite time of meeting is either the holiday season of the winter, or the vacation season of the summer. Usually the convocations are held at the same place: the place generally being the State Capitol. Those associations which have tried the circuit plan of meeting at different points in the State, have generally returned to the plan of having a fixed place of meeting. The secretary of one association writes that the meetings have been held at an "alleged watering place." Without knowing precisely what he means, I report his reply for infor-The local associations meet monthly or quarterly at the places where they are established. One secretary writes that his association never convenes except at funerals—"not much life in our organization," is his apt comment.

## A NEW LITERATURE.

The publications of the various associations received and examined for the purpose of preparing this address, warrant the statement that through their instrumentality a new literature is coming into existence—a literature of great value, and thoroughly creditable to the associated effort which has led to its development.

In Appendix "B" will be found an index to all the accessible reports and minutes of the National and State, and several of the local associations. The collection of these volumes is the result of no inconsiderable labor. But having secured them and being thoroughly satisfied of the value both to the bench and bar of many of the addresses, monographs and essays they contain, I shall have them bound and deposited in the State library. The index will of course be of service in making the legal and literary treasures they contain readily accessible.

Mr. Leonard A. Jones, in his Index to Periodical Legal Literature concludes his preface as follows:

"I wish, particularly, to call attention to the valuable papers published by the various bar associations." I rejoice that my own estimate of the worth of these publications is confirmed by this eminent law writer.

It has not been possible to obtain a complete set of all the reports of all the State associations. In Illinois the editions of several reports remaining after distribution to members and others, were destroyed by fire. In these and some other instances the index hereto appended is indebted to that of Mr. Jones for citaons. This index contains references to the following State reports which probably Mr. Jones had failed to obtain—Arkansas, Mississippi, South Carolina, Texas and West Virginia.

#### GREAT NAMES.

These publications disclose the important fact that the most eminent judges and lawyers in our country BELIEVE IN bar associations as agencies through which good work can be done for professional advantage and public welfare. If this was not their estimate of the worth of these associations, it would be difficult to explain why they should take the trouble of preparing elaborate papers in response to the invitations of these bodies, and frequently of traveling thousands of miles to be present at the meetings. I could not possibly urge, in behalf of the utility of the bar associations and their claims upon the support of the profession, any argument so strongly persuasive as to mention the names of the great men who have contributed hitherto to sustain them and who have done "missionary" work in their behalf. This would also demonstrate the value of the association reports.

I must content myself with referring only to a few of these friends of the associations.

### JUDGES OF THE SUPREME COURT.

Mr. Justice Samuel F. Miller delivered an address before the Iowa Bar Association (reported in 13 Western Jurist, 242, and 20 Albany Law Journal 25) on Professional Training; an address on Legislation as it affects the Administration of Justice, before the New York State Bar Association (2nd Report, p. 31) and on the Functions of Bar Associations (6th Report, p. 83).

Mr. Justice Stanley Matthews delivered an address before the Ohio State Bar Association on the Province of Jurisprudence in America (1st Report, p. 47), and before the New York State Bar Association on the Function of the Legal Profession in the Progress of Civilization (5th Report, p. 103).

I have already referred to the address of Chief Justice Fuller, when President of the Illinois State Bar Association in 1887 (10th Report, 59). In the previous year he prepared a paper on the topic, Constitutional Construction at the Ballot Box (9th Report, p. 96). Mr. Justice David Davis delivered an address at the eighth annual meeting of the same association.

Ex-Justice John A. Campbell made the annual address before the Alabama Bar Association in its sixth year (6th Report, 65).

# EMINENT JURISTS AND LAWYERS.

Hon. Thomas M. Cooley is the author of a paper on Recording Laws in the United States, read at the fourth meeting of the American Bar Association (4th Report, 199). He has also delivered the annual address at the meetings, respectively, of the South Carolina, Tennessee and Georgia Bar Associations.

Judge John F. Dillon, besides delivering the annual address before the American Bar Association has visited the State associations of Alabama and South Carolina and made the annual orations.

Hon. David Dudley Field has furnished to the American Bar Association invaluable reports on Delays and Uncertainties in the Law.

Judge George W. McCrary has delivered addresses before the Missouri State Bar Association and the Kansas City Bar Association.

Judge Seymour D. Thompson has contributed papers to the proceedings of the American and the Missouri Associations and the annual address at this meeting of our Association.

Henry Hitchcock, LL. D., has served the American, the New York State and Missouri State Associations as essayist and annual orator.

The New York State Bar Association has made requisition on the popular orator, Daniel Dougherty, on Governor David B. Hill and even on an English M. P., as well as the distinguished men already named.

# A LIST OF THE ANNUAL ADDRESSES

before the American Bar Association will enforce the point now under consideration. They are as follows:

Chief Justice Marshall (1879), by Edward J. Phelps.

Alexander Hamilton and William Patterson (1880), by Cortlandt Parker.

Chief Justice Taney (1881), by Clarkson N. Potter.

Petigru and Legaré (1882), by Alexander R. Lawton.

James Madison (1883), by John W. Stevenson.

American Institutions and Laws (1884), by John F. Dillon.

Inquiry into the Proper Mode of Trial (1885), by George W. Biddle.

Roman Law (1886), by Thomas J. Semmes.

General Corporation Laws (1887), by Henry Hitchcock.

Codification (1888), by George Hoadly.

Professor Simeon E. Baldwin has contributed valuable reports to the American Bar Association, and has enriched the third volume of the Tennessee Bar Association Report with an address on Insanity as a Legal Fiction.

But this citation of "authorities" must come to an end, not because they are exhausted, but because they are enough. And yet I feel inclined to mention the services of Hon. Rufus King to the American Bar Association, to that of his own State of Ohio, and the city of Cincinnati, and of Hon. C. C. Bonney, to the American, the Illinois, and the Chicago Bar Associations.

Quite a number of the papers in the associations fall under the designation of monographs. Some of these are invaluable, because they are treatises on subjects not treated elsewhere. An instance of this sort is the paper of Francis Rawle, Esq., on Car Trust Securities (8 American B. A., Rep., 277).

Some of the leading law writers, such as Nathaniel C. Moak, George T. Bispham and Irving Browne, have furnished articles for the association reports.

The New York Bar Association offers a prize of \$250 annually for the best essay on a legal topic. This has secured several admirable papers.

On the subject of bar association literature, it is of some interest to note that the New York City Association of the Bar has issued forty-three publications. It is disappointing to find that the Association of the City of Boston has published only one pamphlet. The Law Association of Philadelphia has published a memoir of Hon. Peter McCall, documents on proposed legislation for the relief of the Supreme Court, and a noteworthy address on the judicial character of Chief Justice Sharswood, by Hon. George W. Biddle.

# THE LEGAL PROFESSION JUSTIFIED.

It would be hazardous to attempt to describe in a few words the general features of this "new literature."

Most of the papers, however, in these volumes of "transactions" might be grouped under these heads: (1) Law Reform. Biography. (3) Legal Treatises. (4) The Bar—its elevation. ethics, social utility, etc. The last topic suggests what I regard as one of the most important results accomplished by the bar associations. We all know that lawyers have a bad name in the common speech of mankind, and fill an unsavory place in popular literature. This fact is but the evidence of the well known truth that the public do not understand the functions of the bar-do not understand that system of administering justice of which lawyers are a part. "How can a lawyer defend a guilty man?" "How can a lawver take one side of a case, when he would have taken the other had he been first employed by the other?" These are questions on the lips of many of our fellow-citizens. Now, many of the addresses and essays in these association proceedings deal with this subject. They justify the work of the profession, and explain its functions. And while it is not to be supposed that the reports are read by the general public, yet these thoughts get abroad through newspapers and oral accounts of these association proceedings. This brings me to speak of home matters.

# TRUTH AT THE BAR.

After not a little exploration (I am willing to magnify the extent of it for the sake of my point) in bar association archives. I feel no hesitation in saying that the reports of our association will bear comparison with those of any other State, and that none of them contain a paper superior to the address of Chief Justice Bleckley on Truth at the Bar. I am willing to go further and avow the opinion, that there can not be found in all legal literature so acute and philosophic a statement of the principles on which justice is administered under our system, and of the relation of the bar to that system. There is another fact connected with that address which deserves to be of record, although it could not go down in the colorless minutes. Those of us who heard that address delivered saw (and were a part of) the singular spectacle of a large audience of thoughtful men magnetized by pure Feeling never wrought a spell more complete. enthusiasm was evidenced by the motion to print ten thousand copies, which would have prevailed except for the speaker's own protest. This broke the spell and brought the number down to a third of the figure proposed. After the missionary work of disseminating 3000 copies of that address in Georgia, I think the Bar Association can feel that we have secured immunity, in these days of cranks, against any Jack Cade who may propose to exterminate the lawvers.

It may be doubted if the bar associations generally could do any work more likely to secure respect for law than to follow this Georgia precedent and enlighten the public mind on this subject, about which misapprehensions are almost everywhere rife.

# THE GEORGIA ASSOCIATION REPORTS.

Mr. L. B. Proctor, Secretary of the New York State Bar Association, has gratified me by expressing the opinion of our publications, that "they are very valuable contributions to the learning of the associations and to the profession generally." They have been sought for by the librarians of the Supreme Courts and Law Universities and public libraries in various States.

The labor saved to a Georgia lawyer by such work as was done by Judge W. M. Reese, in his address on the Constitutions of Georgia, and Mr. Alexander C. King, in his paper on Land Titles, is a matter of lasting gratitude in these busy days. But I would not be invidious, so I must not enlarge here.

In this connection it is pardonable to say that we take pride in the contributions of Georgia lawyers to the American Bar Association. General A. R. Lawton's address on Petigru and Legaré is said to have been a biographical revelation to some who did not know that the South had produced lawyers such as they. Our Mr. George A. Mercer (who furnishes to this meeting a valuable report on Legal Education) read one of the best papers presented at Saratoga on the Relationship of Law and National Spirit (2nd Report, p. 43). As chairman of the Committee on Commercial Law, and more recently as member of the Executive Committee, he has been a forceful worker in this national organization. Hon. Henry Jackson's paper on "Indemnity, the Essence of Insurance," reflected credit upon the writer as one who has chosen to make special study in that department of the law, and who has certainly enjoyed special success in that field.

# SOLIDARITY OF THE BAR.

In my study of these association reports one exceedingly pleasant impression has been made. The solidities of the North and the South have completely melted under the genial influence of associated effort, inspired by the high and disinterested purposes for which these organizations are formed. The bar, at least, has learned that solidity and solidarity are not the same. The gentlemen who politically still continue to fire their ballots as they fired their bullets in 1861, exhibit in the association records a completely restored fraternity. Party lines as well as sectional divisions have been wholly ignored. I know of no instance more typical of this than the conjunction of the names of Benjamin Harrison and Thomas A. Hendricks on the same committee (Legal Education and Admission to the Bar) of the Indiana Bar Association.

Another instance of the same spirit is found in the remarks of Hon. Elliott F. Shepard in addressing the New York State Bar Association in 1884. (8th Report, 42.)

Mr. Shepard is regarded as an ardent republican, but he referred in the following words to the election of Mr. Cleveland, who was then an officer of that association:

"This election has called to the Presidency a distinguished citizen of our State, a lawyer, and for two terms Vice-President of our association. This

fact is to be recorded in our annals along with the fact that President Arthur was also at the time of his election, as well as his succession, a Vice-President of our association. . . . Without any party bias, but with pure patriotism, I think we can all join in wishing Vice-President Cleveland a successful administration as President of the whole country."

#### LIBRARIES.

The replies to the question on this subject show that thirty-one associations have libraries. The largest, doubtless, is that of the Association of the Bar of New York City. That of the Law Association of Philadelphia contains 22,500 volumes. The Indianapolis Bar Association has a library worth \$5,000, sustained by the members. The Minneapolis Bar Association has a full library and an annual income of \$3,000. The Essex county (Mass.) Bar Association has a library of 8,000 volumes, and \$3,000 annually from the county, by virtue of the general statute already referred to. The associations having libraries have generally published catalogues of them.

In view of the great interest and value of the association reports, and of the fact that they will grow more valuable as time progresses, it is to be hoped that the officers of all the associations will provide for an interchange of proceedings, and that arrangements will be made for each association to have a collection at least of all the reports of other organizations.

# THE DINNER QUESTION.

I have been made to realize that the phraseology of the next question—"besides eating an annual dinner, what work has the association accomplished," was rather infelicitous. Numerous responses protest that the eating of the dinner is not "work" at all; and the secretaries of the associations which do not have banquets state the fact with unconcealed regret.

The verbiage of the question might be defended on the ground that, in England, the matter of dining is an indispensable prerequisite to admission to the bar. [Weeks on Attorneys, §§17 and 18.] The phrase "dining into the bar," is expressive of this fact. Not less than six dinners per term in the halls of the legal societies will suffice; and it is solemnly provided by a regulation existing to this day, that "no day's attendance in hall will be available for the purpose of keeping term unless the student attending

shall have been present at the grace before dinner, during the whole of the dinner, and until the concluding grace shall have been said"

But I will not be so disloyal to the prandial traditions of the bar as to insist that the annual banquet is to be classified as part of the work of the association. It is said that Lord Ellenborough never strained a point harder in any decision than in his judgment declaring persons engaged in lobster-fishing exempt from military service. "I think," said he, "that our law-makers must have intended that when turbot is placed on our boards, it shall be flanked with good lobster sauce." As

# AN ANECDOTE

is always in order, I am "reminded" of an incident that occurred during Lord Coleridge's visit to this country. Mr. Emory Storrs gave a dinner in his honor at Chicago. But Mr. Storrs was always in debt, and lo! who should appear at the door when the spread was laid but an unbidden guest—the sheriff with a fieri facias, to be levied on the repast upon which a hundred hungry lawyers had just begun to levy their appetites. A friend of Mr. Storrs, realizing the situation, hurried to the door and gave his check for the amount of the execution. But not soon enough to prevent the truth from dawning upon the discomfited guests and the imperturbable host. Storrs was equal to the emergency. "Great heavens!" he exclaimed, "what will a Chicago constable do next? He was about to levy on a Lord's supper."

In many of the reports, the banquet proceedings are reported in full. The Secretary of the Missouri Bar Association writes:

"We have brought unusual dignity and modesty to this entertainment by allowing each member of the association to be accompanied by a lady."

The minutes of the Illinois Association record the fact that the members "with their wives and ladies filed in, and dancing continued to a late hour;" for which, likewise, precedent can be found in the records of the Inns of Court.

#### DILETTANTEISM.

The frame of the question referred to was suggested by the proceedings of the Boston Bar Association. It would appear that the

charge of dilettanteism had been made against that body (as it has been made against many other associations) and a committee was appointed to inquire whether and how the usefulness of the association could be promoted. In their report the committee stated with admirable candor:

"1st. For sometime past, this association has been very nearly, if not quite useless."

"2d. A number of honorable, reputable and able members of the bar have refused, and do refuse to become members of this association, unless and until it does something other than have an annual dinner to demonstrate its usefulness."

With this report in mind, I knew no better way of challenging the association secretaries to whom the circular "praying discovery" was addressed, than to inquire what serious work the associations had done, along with the diversions and good fellowship of toasting. Your Executive Committee, I learn, have determined to achieve immortality for the Georgia Bar Association by having, at this session, a silent banquet. Perhaps they think that lawyers may find the same enjoyment which Sidney Smith referred to, when he said that "Macaulay had flashes of silence that were perfectly delightful."\*

# REAL WORK-LEGISLATION SECURED.

In reply to the question: "Has your association secured any legislation"—there are forty-eight replies in the affirmative—only eleven in the negative. Several of the latter answers are explained by the fact that the associations enquired about have been very recently organized.

J. T. Holmes, Secretary of the Ohio Bar Association, writes: "The judicial article of our (State) constitution, as it now stands, originated literally with our association."

Mr. Shepard, in the address to the New York State Bar Association, above referred to, said:

"It appears that every recommendation of law made by the association has been adopted by the legislature, or the people, or by both, as the case required."



<sup>&</sup>quot;It is due to the truth of history to say, that the scheme of the committee was set at naught. The "convivial deity" (as Curran was called) of the Association, Mr. Emmett Womack, was compelled to "dislodge his hospitable limbs from beneath the mahogany" and take the floor. Others also were called upon.

The Bar Association of Illinois has secured, inter alia, an act establishing an Intermediate Court of Appeals. The Bar Association of Missouri secured an act, creating a Supreme Court Commission, to relieve the over-crowded docket of that court, and also an act establishing a Court of Appeals at St. Louis and Kansas City.

The Wisconsin, Illinois and South Carolina associations have secured amendments in the law regulating admission to the bar. These instances are merely illustrative. They cannot be made exhaustive.

In some States, good work has been done by the associations in quashing unwise legislation—a public service equally as valuable as securing the passage of good laws.

# THE STANDARD OF THE PROFESSION RAISED.

The replies to the question on this point show affirmative answers, fifty; negative, eight.

Twelve associations have undertaken the disbarment of lawyers for unprofessional misconduct. This has not been confined to members of the association, but in several instances the proceedings have been against "outsiders."

The uniform testimony is that the influence of these proceedings has been salutary. Alexander Troy, Esq., Secretary of the Alabama Bar Association, writes on this topic as follows:

"It will be necessary for the association to prosecute to disbarment only one or two lawyers, to convince the outsiders that we are in earnest, and the membership of the association will greatly increase."

# MISCELLANEOUS WORK.

A great deal of what might be called general work, outside of the special objects of the association, has been undertaken. For instance, the Association of the Bar of New York City took a prominent part in the impeachment of the corrupt judges who were removed from office several years ago. This association has also sustained the brunt of the fight against codification in New York, an achievement about which they and Hon. David Dudley Field entertain widely variant opinions. As we have a Code, our sympathies in Georgia are with Mr. Field.

I find that two associations have organized a method of securing a fund for the families of deceased members.

Eleven associations report that they have established fee-bills, and they report that they have been instrumental in stopping the "ratting" of the same.

Several associations have procured portraits of distinguished lawyers and judges for the halls in which they assemble. One has been instrumental in starting a law periodical.

The Secretary of the Northhampton Bar Association writes: "It has shown the people that lawyers are not so wicked as they are painted. Vide 19 Weekly Notes of Cases, 476."

The Alabama Association has undertaken the codification of legal ethics. It makes an admirable document.

In this correspondence I have found a generous disposition to promote the object in view, and have met with many things that were pleasant. I can only give you one illustration. Mr. H. C. Jessup, Secretary of the Susquehanna County Legal Association, writes that he "entered the war too late to bring home any trophy except a Southern bride, and as she now weighs two hundred pounds, I feel that I am as well backed by the solid South as President Cleveland."

# HOW SUPPORTED.

The reply to the last question develops the fact that wherever the associations are maintained, they receive a cordial support from the bar.

The Secretary of the New York State Bar Association writes with just pride that "it is one of the most popular institutions of the State."

The secretary of another association writes, "all the brainy end of the bar is in and the tail end out."

Every fact relative to the new Chief Justice of the United States Supreme Court is now of special interest, and I have taken pleasure in looking up, as far as I was able, what may be called his bar association record. He served on committees of the Chicago Bar Association in the years 1874 to 1876, 1881 to 1885 and 1887. He was first Vice-President in 1878 and 1880. He was elected a delegate to the American Bar Association at one of its meetings. His addresses before the Illinois State Association have already been referred to. May we not hope that he will recognize in his call to preside over the most august tribunal in the world, a special opportunity to give the weight of this newly acquired in-

fluence towards the encouragement of these associations, which to him, as a lawyer, seemed worthy of his friendship and effort?

The financial support of the associations has everywhere been gratifying. Considering the skill with which lawyers (it is alleged) contrive depredations upon a fund in court, it is singular that they have discovered so few ways and means of exhausting the surplus in the treasuries.

This detailed compilation of the declared purposes of the bar associations, and the results they have achieved, warrants the statement that they have been evolved from a spirit in the bar which responds to the deep truth of the saying, that every man owes a debt to his profession—a spirit which recognizes the fact that our profession sustains public relations to the commonwealth. Let no man who ministers around the sacred altars of Justice cry, "Great is Diana of the Ephesians, for by this craft we have our living." The profession of the law is to be regarded as something more than a bread-winning craft, or a spring-board from which to leap into politics. Believing that such is your estimate of our common vocation, I address myself now to the practical suggestions which, it seems to me, we may accept from the record of what has been attempted and accomplished in other jurisdictions, in connection with the provisions of our own "charter."

## LAW REFORM.

First, I would urge the lawyer's duty, not merely to aid the judiciary in construing and applying the law, this being his function as officer of the court, but to aid the legislature in improving the law, this being his function in the public relation he sustains to the law-making power.

While provision is theoretically made with equal adequacy for making, enforcing and construing laws, yet it may be fairly said that, in our State, that part of legislation relating to law reform is not adequately provided for, in the practical workings of our system. No man and no body of men in the commonwealth is charged with the special duty of observing and studying the law and its administration with a view of remedying defects and suggesting improvements. An illustration of these views is found in this fact: In 57 Georgia, 274, our Supreme Court called attention to a confused state of our statute law on an important subject and said "the whole subject needs legislation." But

there has been no legislation, because, doubtless, it is "nobody's business" to see to it. We all know that for many years, in spite of admitted deficiencies in the modes of legal procedure, no comprehensive or carefully-studied scheme for increasing the efficiency of the courts in the administration of justice—or bringing the administration of the law abreast with other advances in the progress of civilization—has been proposed. The only changes made in the body of the laws are such as have been probably suggested to the lawyers, who are members of the legislature, in the course of their practice.

Now, the constitution and by-laws of the Georgia Bar Association provide a plan for securing and utilizing the aggregate wisdom and experience of all members of the Association and of the entire bar of the State in behalf of law reform. After defining the duties of the standing committees on jurisprudence and law reform, and on judicial administration and remedial procedure, the seventh by-law, paragraph 2, provides that these "committees shall invite suggestions on the topics confided to their charge from all the members of the Association, and if they see fit, from all the lawyers of the State; and where their reports recommend changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly."

This is a unique provision. It "means business." It contemplates work. I find nothing like it in any of the other constitutions. And I confidently submit that if our committee will only work the plan, we shall see results of lasting benefit.

To go to the legislature, a lawyer must go into "politics." Many—very many—of the best lawyers in the State do not desire to get into politics, and cannot afford the business sacrifice of serving in the General Assembly. But the Bar Association may, by this systematic canvassing of professional opinion, secure the results of all the study, research, observation and experience of the entire bar of the State, in recommendations for reform in the law.

Judge John F. Dillon, in the address before the South Carolina Bar Association, already referred to, said:

"I have said that the objects of your association are not only high and noble, but necessary.

"Defects in civil laws are mostly discovered in the course of private

litigations, and from which defects one or both of the litigants are sufferers.

"The community at large knows little and cares little about the subject. The judge points out to the parties and counsel the miscarriage of justice in the particular case, and there the matter drops. Unless the defects are such as seriously to affect great interests, or large numbers of persons, they do not usually engage legislative attention and indefinitely remain nare medied.

"These observations show the utility of associations of this character, and their principal usefulness is their ability to promote needed reforms and amendments in the law, by making known to the legislature the necessity therefor, and urging and securing the requisite legislative action."

Another excellent provision is that which instructs our standing committees to consider and report upon the subjects treated in the addresses and papers presented at the annual meetings. The result of a compliance with this provision will be that the Association will take action upon the suggestions made in the contributions which it invites from members and others. This feature of the by-laws is peculiar to our Association. It certainly indicates a purpose that the reading of essays shall not merely give entertainment, but become the foundation of practical results.

#### THE HONOR OF THE PROFESSION.

How shall we execute that clause of our charter which declares that we are organized to "uphold the honor of the profession of the law?"

I remember meeting a friend shortly after our constitution was first published, who professed to be amused at this language. Said he: "You will have to establish that honor, before you can talk about upholding it," and he proceeded to tell me the story of a lawyer who had collected a sum of money for his client and lost it in gambling. The lawyer, in distress, took out a warrant against the winner. This is called "squealing" and is, of course, unprofessional. The gambler was narrating the occurrence to another lawyer and said, "That fellow is a ruined man. He can't enter a respectable gambling saloon. By Jove, he can't do anything but practice law!"

If DeToqueville's visit to America had been made during recent years, I doubt if we should ever have had that tribute to the aristocracy of the bar which lawyers are so fond of quoting.

Judge Cone used to express his conviction that there was a

decadence in the glory of the profession, by declaring that his generation of lawyers was the last that would ever be allowed to sit at the first table.

In 1870, Mr. Tilden said to an audience of lawyers in New York: "It cannot be doubted—we can none of us shut our eyes to the fact—that there has been in the last quarter of a century a serious decline in the character, in the training, in the education, and in the morality of our bar."

While many, perhaps a majority, of lawyers, are as worthy men in private and professional relations as the bar ever contained, yet the mere fact of membership in the profession does not carry with it the honor which it ought to import—which it does import in France and England—and which, to some extent, it imported in the days when De Toqueville described the rank of the profession in this country. This decadence may be attributed to two causes: (1.) The low standard of admission to the bar. (2.) The popular impression of inefficiency and failure in the administration of the law—which has naturally had an unfavorable effect upon the popular estimate of the legal profession.

# LEGAL EDUCATION AND ADMISSION TO THE BAR.

The members of this Association are generally agreed that the requirements and safeguards on this subject in Georgia are wholly insufficient. It is within the knowledge of several gentlemen here, that one man secured admission who signed his name with his mark! In the fourth annual volume of the American Bar Association, there is a valuable report on Legal Education which tabulates the requirements in all the States. General Lawton said, in the discussion on this subject by our Association in 1885, (Second Report p. 49,) that "it was scarcely possible to get an intelligent and well-educated lawyer of another State to believe" that in Georgia there is no requirement whatever as to definite term of study. This is one of those facts—like the ugly fact that our illiteracy exceeds that of any State in the Union—which we ought to think about until we resolve that it shall be a fact no longer.

On principle, there is no middle-ground between the two opposing views that the law is a trade or a profession. If it is a trade, leave it to the free play of purely commercial considerations. Let every dunce and every sharper have the right to try his luck at it. But if it is a profession, and confers upon its members great

privileges in the conduct of litigation, then let the doors be closed to all except those who are willing to labor for, and are found to possess, the requisite qualifications.

In our first year, we laid a firm hold upon this important matter. We have differed about details, but let our Association never relax its grasp until we have secured a change in the present system. Unless we do so the Bar Association will never be able to justify its existence.

### LEGAL ETHICS.

We have a special committee on this subject, who will make a report at the present meeting.

In the President's address before the Illinois Bar Association, in 1887, Chief Justice Melville W. Fuller said:

"The elevation of 'the standard of integrity, honor and courtesy in the legal profession,' asserted in the constitution as one of the objects to attain which this body was formed, involves what indeed would be within its province without such declaration, not only the purging of the bar of unworthy members, but the laying down of canons of conduct defining with reasonable precision the limits of professional decorum.

"For example, since as a part of the official machinery of justice it is absolutely essential that the officers of the court should be free from all suspicion of uncleanliness, it would be entirely proper to define how far agreements which in effect stipulate for part of the claim in litigation, or make the compensation contingent upon success, can be allowed, if at all, while at the same time justice is not denied to the indigent, whose poverty may require the rendition of services without payment or security in the first instance.

"This, and other matters pertaining to professional ethics or etiquette, such as the respect which should be paid by the bar to judicial decisions as to which there are considerable differences of opinion, the discussion of decisions in the secular press, and the like, are within the scope of the duties the association has to discharge in effectuating the purposes which justify its organization."

In view of the importance of the subject, I would recommend that the Special Committee on Legal Ethics be made a standing committee, and they be requested at the next annual meeting to tabulate or codify, as far as possible, the canons of professional conduct.\*

# DISCIPLINE AND PUNISHMENT OF OFFENDERS.

On this subject, Mr. Justice Miller, in addressing the New York Bar Association (6th Report, 85), after referring to this function of

This suggestion was adopted by the Association.

the bar association, said: "I had the honor a few years ago of addressing a similar association of the bar of the State of Iowa, and I had, also, not the honor or pleasure but the duty of presiding at a case of administration of justice on one of the most distinguished members of that bar, by a prosecution for improper conduct. A man who had stood high in the community, had been a member of the Supreme Court of the State, and who was brought before the courts by the bar of the State."

It has already been stated that twelve bar associations have instituted similar proceedings. I would suggest, as our Committee on Grievances, under the existing definition of their duties, would have no jurisdiction of a complaint, except against a member of the Association, that the by-law be changed so as to empower them to proceed against any member of the bar charged with unprofessional conduct.\* It is the duty of this Association, if it intends to execute the objects declared in its constitution, to uphold the dignity of the profession by disbarring all who, by immoral or illegal conduct, abuse the privileges conferred by their license. One such proceeding in a proper case would be a wholesome example, and would secure for the Association (as no other act could do) the confidence and respect of all the people of the State.

# FEDERAL LEGISLATION.

I would respectfully suggest the appointment of a new standing committee on this subject, to co-operate with the committees of the American Bar Association and of other States and cities who are seeking to obtain legislation for reform in the Federal judicial system.

The admitted and familiar grievances are: 1. The delay of hearing causes in the Supreme Court. 2. The want of any adequate provision for a review of the decisions of the district judge, sitting alone as a Circuit Court, in cases involving less than \$5,000, and in criminal cases.

As to the first point, it is an unspeakable misfortune that the greatest tribunal ever constituted by man, has been left by Congress to struggle under ever-increasing strata of undone work, and that the popular mind is coming to associate with that august

<sup>†</sup>This suggestion was adopted by the association.



This suggestion was adopted by the Association.

court the thought, not of the majesty of the law, but of grievous delay of justice! As to the other point, it is an ancient and sacred right of the common law system—a right the value and importance of which every lawyer appreciates—to have a review of matters, occurring upon a trial, before a tribunal other than that by which the trial was conducted.

The remedy for both these grievances is in the establishment of an intermediate appellate court, which will relieve the Supreme Court, and furnish a tribunal for the review of decisions in the lower courts of the Federal system.

There is scarcely a difference of opinion on any of these points, but it is to be noted, that when there was a Republican President. the Republican Senate was keenly alive to the necessity for this measure, but a Democratic House would never concur. As soon as there was a Democratic President, all at once the Senate lost all interest in the subject, but the Democratic House immediately took hold of the matter and the Judiciary Committee reported a bill. The question, then, of party appointment of the judges has hitherto obstructed the most urgent need for reform in the Federal judicial system. The only gratifying thought about the situation is this: Both parties have, by their conduct, placed themselves in an attitude which would estop them from objection, if it should come to pass that the Senate, House and President were in political accord.

# LEGAL BIOGRAPHY.

I would also suggest that we should regard it a sacred trust, to preserve adequate memorials of the great lawyers who, in the past, have adorned the Georgia bar, but whose memories are a fast vanishing tradition.

Bulwer has drawn, with rare insight, the picture of a great lawyer, confronted with the truth that his fame, as such, was perishable as the wealth it had brought him.

"Let a half century pass over his tomb, and nothing would be left to speak of the successful lawyer, the applauded orator, save the traditional anecdote, a laudatory notice in contemporaneous memoirs; perhaps, at most, quotations of eloquent sentences lavished on forgotten cases and obsolete debates; shreds and fragments of a great intellect, which another half-century would sink without a bubble into the depths of time. It is so with many a Pollio of the Bar and Senate. Fifty years hence, and how

faint upon the pages of Hansard will be the vestiges of Follett. No printer's type can record his decorous grace—the persuasion of his silvery tongue."

How true it is that the reputation of a great lawyer fades away after his death like a world of receding echoes!

Upon whom, if not upon us, devolves the duty of preserving the record of the lives, and services, and genius, of the bench and bar of Georgia? The only book which we have on the subject is wholly inadequate and incomplete.

To be specific, my suggestion is that the Executive Committee shall provide at each meeting of the Association for one or more papers, which shall give the biography of some eminent lawyer of the Georgia bar, accompanied, wherever practicable, by an engraving of the subject of the sketch.

#### INTER-STATE LAW.

I would further recommend an addition to our by-laws, providing for a standing committee on Inter-State Law, whose duty it shall be to bring to the attention of our Association all legislation recommended by the American Bar Association, for the purpose of promoting uniformity of laws upon subjects of common interest; and to endeavor to secure the adoption by our legislature of such of these measures as are approved by our Association.

After dwelling so long upon subjects connected with the public relations of our profession, let us ask ourselves what concern have we, as individuals, in those studies and activities in which bar associations engage us. This inquiry is altogether legitimate and proper. For the claims of altruism are not higher than the claims of self hood. The Great Teacher made the latter the standard and the measure of the former.

#### INTELLECTUAL INTEGRITY.

The first benefit to be mentioned as coming from these studies and activities is, that they stimulate and exercise that love of truth, for truth's sake, which it is vitally important to every lawyer's intellectual life to preserve.

It has been made a question whether the practice of the legal profession is consistent with the preservation of intellectual integrity.

Browning, in the Ring and Book, raises this question, in his portraiture of one of the lawyers, in an old Italian criminal trial:

"Pompilius, patron by the chance of the hour,
To-morrow, her persecutor—composite he,
As becomes one who must meet such various calls.

Language that goes as easy as a glove O'er good and evil, smoothens both to one."

The answer to the argument here implied is found in the lawver's position—that of agency. Such is his relation to his client. and this relation will be fully recognized by the court. Universal experience has shown that the best system of settling issues between parties, is by having trained men discuss the respective sides before an impartial tribunal. The lawyer is a part of this system. If it be objected to as defective, it is enough to say that no better system has ever been devised or proposed. If there were no lawyers, the judge would have to look first at one side and then at the other, in order to reach a decision. If, in order to obtain assistance, he should request two learned and experienced friends to present these different sides, they would simply render for him the same service which is now rendered by the counsel of the respective parties. In the argument of a mooted point of law before the court, the advocate does not say-his position does not authorize or require him to say "I have presented to the court all the law on both sides of this case. I have presented to the court that view which, if I were judge. I would, after balancing both sides, entertain." If he attempted to do this, he would not fulfill his duty to his client, which binds him to represent that client's side in the strongest light of which it is capable; and he would cease to be an efficient aid to the court, which. in order to arrive at the correct decision, expects and desires the counsel on each side not to take the place of the court, but to present their respective sides with their utmost skill. applies to the discussion of conflicting evidence before the jury. The position of the lawyer, in reference to his client, and to the tribunal before which he appears, commits him to this, and only this: to do for his client what the latter could lawfully do for himself, if he acted in person; to urge those views of the law and the facts which arise in favor of the side which he represents.

But candor compels the admission that this is, intellectually, a

dangerous position. The lawyer has need of a sedulous care, lest he begin to palter with truth. No success could atone for the mental injury of yielding to such an influence. Hence, it seems to me that the lawyer should welcome this new field of professional activity—opened up by the bar association—in which the temptations that beset the mental labors and habits of his occupation are wholly absent, and truth alone is the object of his direct search.

#### THE SENSE OF JUSTICE.

It is no uncommon thing for the bar to witness miscarriages of justice, in particular cases. So far as these result from the enforcement of law, the lawyer, as such, may witness them and take part in them with perfect complacency.

He takes the "wide survey of causes" and realises the truth of Lord Bacon's saying (which contains the whole philosophy of the subject), "some things must be done unjustly in order that more things may be done justly."

But here again is a danger and a temptation—this time to his moral nature. Sad is his case who has allowed his soul to become subdued to what it works in—like the dyer's hand, and who no longer feels a keen pang in all of the man that is not lawyer, at every failure of justice. Every case of hardship or injustice should touch a double chord in his nature—the lawyer's supreme love of law—the reformer's supreme sense of right. He owes it to his professional obligation to apply the law at the sacrifice of justice. He owes it to his moral nature to see to it that no similar sacrifice shall ever happen again. How and where else can he so fully discharge this moral obligation as by working in and through the bar association?

Can any lawyer contemplate with serenity and entire satisfaction the existing condition of the law, and its present modes of administration? In criminal cases, what are we to think of the stupendous fact, that during a year more men are lynched by mobs than are executed by the mandate of the courts? In civil cases, can we say that the law is doing its part of the world's work—that it is administered on those principles of promptness, efficiency, cheapness and certainty, which are to be found in other departments of the world's work? These are serious questions. In the storm and stress of social agitations that may be impending, the

American people will need to appeal to the deep sense of reverence for law. God forbid that the enemies of social order should be able to say with truth, "your law is not worthy of reverence!"

### GRANDEUR OF THE LAW.

The lawyer needs, now and then, amidst the dry-as-dust details of routine and practice, to refresh his spirit, as he may do in the channels of thought and endeavor, opened up by the bar associations, with those broad and grand aspects of professional effort which touch and uplift the imagination.

When we act for our clients in any case, we, as part of the machinery of a great system, are acting for every man who may ever have a case, and therefore for all the public, as officers of the law. When we stand for the defense of an accused person arraigned, it may be by popular prejudice, we realize that our profession is one of the securities of public liberty. When such a service involves personal risk or loss, our professional work acquires the dignity of moral grandeur. When we rise to the height of those great arguments from which is evolved our constitutional law, we exercise a function which in all other nations but ours belongs to the highest offices of statesmanship, and the greatest problems of politics. This function raises the American bar as far above that of other countries as the Federal Supreme Court is elevated, by its jurisdiction to declare unconstitutional legislation void, above the highest judicial tribunals of other nations.

#### RELATION OF LAW TO THE INFINITE.

But, my brethren of the Georgia Bar Association, we are so made that nothing can meet the needs of the spirit unless we can apprehend it as related to the Infinite. The capacity of the human soul to conceive the Infinite, and yet to be conscious of its own incapacity to grasp it, is the sublimest mystery of being! "Like the infant's hand outstretched to seize the globe, it is thrown back by the reaction of its own littleness," but the outreaching of the soul of man to find the Infinite is the proof of an infinity within.

I cannot so fitly close this address as in the noble words of a profound thinker and lawyer:

"And now, perhaps. I ought to have done. But I know that some spirit of fire will feel that his main question has not been answered. He will ask: 'What is all this to my soul! You do not bid me sell my birthright for a mess of pottage. What have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?' Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world: but if he has the soul of an idealist, he will make—I do not say find—his world ideal. Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt that a man may live greatly in the law as well as elsewhere; that there, as well as elsewhere, his thought may find its unity in an infinite perspective; that there, as well as elsewhere, he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable."

## APPENDIX A.

# LIST OF ASSOCIATIONS WHOSE OFFICERS RESPONDED TO CIR-CULAR LETTER OF INQUIRY.

[The figures at left-hand margin indicate year of organization.]

1883. Minneapolis Bar Association. 1878. Bar Association of Monmouth county, N. J. 1870. Association of the Bar of New York City. 1885. North Carolina State Bar Association. 1878. Hampshire Bar Association, Northampton, Mass. Allegheny County Bar Association, Pittsburg, Pa. 1886. Susquehanna County Legal Association, Pa. 1802. Law Association of Philadelphia, Pa. 1882. Arkansas State Bar Association. 1862. West Chester (Pa.) Bar Association. 1885. Law Association of Indiana county, Pa. 1886. Law Association of Indiana county, Pa.
1886. West Virginia Bar Association.
1856. Essex Bar Association, Salem, Mass.
1889. Union County Law and Library Bar Association, Elizabeth, N. J.
1883. Montgomery county (Ohio) Bar Association.
1876. Bar Association of City of Boston.
1879. Essex County Bar Association, Newark, N. J.
1885. Louisana Bar Association.
1874. Victor Par Association of Connection of Connection. 1874. State Bar Association of Connecticut. 1874. State Bar Association of Connecticut.
1886. Huntington County Bar Association, Pa.
1867. Plymouth County Bar Association, Mass.
1887. Fall River Bar Association, Mass.
1877. Illinois State Bar Association.
1872. Cincinnati Bar Association.
1887. Jacksonville Bar Association, Fla.
1882. Cambria County Bar Association, Pa.
1841. Kennebec County Bar Association, Maine.
1871. Bar Association of Newcastle county, Wilmington, Del.
1885. Montgomery County Bar Association, Pa.
1880. Ohio State Bar Association. 1880. Ohio State Bar Association. 1881. Tennessee State Bar Association. 1888. Mississippi State Bar Association. 1884. South Carolina Bar Association. 1878. Nebraska Bar Association. 1877. New York State Bar Association. 1847. New Orleans Bar Association. 1885. Clarke County Bar Association, Ia. 1879. Hudson County Bar Association, N. J. 1878. Indianapolis Bar Association.

1875. Erie County Law Association, Pa.

1881. Missouri Bar Association.

1887. Federal Bar Association, Washington, D. C.

1880. McKean County Bar Association, Pa.

1886 Louisa (Va.) Bar Association.

1879 Indiana State Bar Association.

1878. Crawford County Bar Association, Pa.

1849. Wilkes-Barre Law Library Association, Pa.

1881. Maine Bar Association.

1881. Lancaster Bar Association, Pa.

1887. Schuylkill County Bar Association, Pa. Lenawee County Bar Association, Mich.

1853. Association of Bar of Bucks County, Pa.

1878. Wisconsin Bar Association.

1878. Snyder County Bar Association.

1886. Norfolk Bar Association, Mass. 1885. Bar Association of City of Richmond, Va.

1885. Bar Association of Northampton County, Pa. 1842 Berkshire Law Library Association, Mass.

1878. Bradford county Bar Association, Pa.

1882. Grafton and Coos County Bar Association, N. H. Blair County Bar Association, Pa.

1884. Forest Bar Association, Pa.

1886. Westmoreland Law Association, Pa.

1870. Lycoming Law Association, Pa. 1864. Hampden Bar Association, Springfield, Mass.

1883. Warren County Bar Association, Pa.

1866. Cumberland Bar Association, Portland, Me.

1879. Alabama Bar Association.

#### APPENDIX B.

## INDEX

TO THE

# Reports of the Various Bar Associations in the United States.

Norg.—Consult page 66 of the foregoing address in reference to this Index.

ABBREVIATIONS.—Am. represents the American Bar Association. The ordinary abbreviations of the names of States are used as referring to the Reports of State Associations. The name of the author of any address or paper indexed is in parenthesis.

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## APPENDIX No. 3.

# REPORT OF COMMITTEE ON NATIONAL BAR ASSO-CLATION

ATLANTA, GA., August 7th, 1888.

To the Georgia Bar Association:

The undersigned Special Committee, appointed by the President to prepare, have printed and distributed, a statement of the purposes of the National Bar Association, and showing why, in our opinion, it deserves the support of this Association, beg leave to report that in compliance with the duty assigned to us we had printed five hundred copies of the statement, a copy of which is hereto annexed, and mailed a copy to each member of this Association, and the remaining copies we herewith deliver to the Secretary for the use of the members.

By request of the President, we also mailed copies of the proceedings of the National Bar Convention to a few of our members, and have some copies left which we turn over to the Secretary with this report.

Our expenses in discharging these duties were as follows:

Paid	for	printing 500 copies of statement	<b>\$</b> 5	00
"	"	300 envelopes		90
		300 one cent stamps		
			-	
Total		<b>\$</b> 8	90	

Respectfully submitted,

JAMES BISHOP, JR.,
DUDLEY DUBOSE,
EMORY F. BEST,
Committee.

# To the Members of the Georgia Bar Association:

In view of the fact that it will be necessary, at the meeting of our Association on the 7th and 8th of August, to determine whether this Association will connect itself with and send delegates to the National Bar Association, which convenes at Cleveland, Ohio, on the 8th of August, the President has appointed the undersigned as a special committee to prepare and distribute a statement setting forth the objects of the National Bar Association, and to report whether in our opinion the Georgia Bar Association should connect itself with that organization. This is done in order that the discussion of the matter may be the result of accurate information furnished in advance. In compliance with the duty assigned to us, we have hastily prepared the following summarized sketch which we have had printed and caused a copy to be forwarded to each member of our Association, and we respectfully ask that it be promptly and carefully read.

On May 22d, 1888, by request of the Bar Association of the District of Columbia, delegates elected or appointed from the various bar associations in the United States assembled in convention at Washington City. Hon. James O. Broadhead, of St. Louis, Mo., was elected chairman and afterwards president of the association organized, and one vice-president was elected from each judicial circuit in the United States, as follows:

First Circuit—William E. Chandler, of New Hampshire. Second Circuit—George T. Edmunds, of Vermont. Third Circuit—Guy E. Farquhar, of Pennsylvania. Fourth Circuit—A. S. Worthington, District of Columbia. Fifth Circuit—Percy Roberts, of Louisiana. Sixth Circuit—John H. Doyle, of Ohio. Seventh Circuit—George E. Adams, of Illinois. Eighth Circuit—Given Campbell, of Wisconsin. Ninth Circuit—Zach. Montgomery, of California. R. Ross Perry, of Washington, D. C., was elected secretary, and Lewis B. Gunckel, of Dayton, Ohio, treasurer.

In that convention the Georgia Bar Association was represented by James Bishop, Jr., Dudley DuBose and Emory F. Best. Other delegates were appointed by the President but did not attend. When the convention met a committee was appointed to prepare a constitution and by-laws, Mr. Bishop, of this Association, being one of that committee. The work of the committee was submitted to the convention, and with a few amendments was adopted.

It shows that throughout the country there are sundry bar associations, the objects of which are to maintain the honor and

dignity of the profession, to increase its usefulness, and to promote mutual improvement and friendly intercourse, but their scope and operations are more or less limited, and their forces ought to be combined and their scope extended by forming a central national association, to be composed of delegates from each local association. Therefore, an association was organized under the name of the National Bar Association of the United Its objects are to promote uniformity in the laws of the various States on the subjects of descents, wills and conveyances, marriage and divorce, limitations of actions, the settlement of estates, comity between the States, extradition of criminals, commercial paper, and all other subjects where unification is desirable: to promote improvement of the judicial system of the States and United States: to promote a knowledge of the laws of the States and United States: to encourage and extend acquaintance and fellowship among the members of the profession; to devise methods for maintaining the standards of professional honor and ethics: to promote the science of law and the administration of justice.

The association is purely representative in its membership, and is to be composed of delegates from such other bar associations as may ratify the constitution adopted by the convention, and each association shall pay five dollars in advance as annual dues for each delegate to which it is entitled, viz.: Three delegates for every fifty members. The Georgia Bar Association, having two hundred and seventy-six members, is entitled to sixteen delegates, and will be assessed \$80. This money is to be expended for defraying necessary expenses of the association, and in having its proceedings and other publications printed and distributed among the delegates and the associations they represent. At the first election the delegates are to be divided into three classes, one-third being elected for one year, one-third for two years, and one-third for three years.

There will be annual meetings, and the first meeting is to be held at Cleveland, Ohio, on the 8th of August, 1888.

The following standing committees are appointed annually: Executive committee, committee on uniformity of laws, committee on law reform, committee on legal ethics, committee on legal education and admission to the bar, committee on international law, committee on printing, and such special committees as may be necessary, the style of each indicating its duties, the Georgia Bar Association being now represented on the executive com-

mittee by James Bishop, Jr., and on the committee on uniformity of laws by Emory F. Best. The other members of the executive committee are Hon. James O. Broadhead, Mo.; R. Ross Perry, D. C.; Lewis B. Gunckel, O.; J. Morrison Harris, Md.; S. A. McClung, Pa.; James Caskie, Va.; B. M. Ambler, W. Va.; F. H. Busbee, N. C.

To amend the constitution three months notice must first be given to each represented association.

The proceedings of all meetings are to be published and distributed.

The purpose of the National Bar Association is not to supersede, oppose, or interfere with the American Bar Association, but to co-operate with that and other associations in accomplishing what none of them have been able to accomplish alone.

Already the following subjects have been referred to the committee on uniformity of laws, to-wit: The feasibility of procuring uniform legislation on the subject of negotiable paper; the practicability of the several States passing uniform laws of marriage and divorce; the consideration of the subject of extradition of criminals; uniformity in the form of execution and acknowledgement of deeds and conveyances.

The intention is to prepare and submit to the legislatures of the different States bills providing for uniform legislation, on subjects of general interest to the people throughout the country, and to secure such legislation by having the lawyers thoroughly organized for that purpose, lawyers above all men realizing the great inconvenience of having different laws in different States on the same subjects, while business transactions are not limited by State lines.

By having one central organization composed of representatives from the local and other bar associations in the United States, the evils that exist can better be ascertained by the reports of delegates from all the States, and by united action remedies may be devised and applied.

That lawyers exercise a great influence upon the laws is a well recognized fact, and the idea is to have unity of action among the profession all over the country, so as to secure the enactment of such laws as will best protect and promote the interests and welfare of the people in every part of this Republic. In the language of Hon. James O. Broadhead: "The influence of the legal profession best secures good laws because they are in the habit of studying the use of language in statutes, interpreting the provisions of the constitution, investigating individual rights, and determining

great public questions. It is very important that they should be united in this work of securing good laws, and uniform laws on many important subjects in every State of the Union, so that the rights of individuals and property may be better secured. In a great majority of subjects in which all of us are interested the Federal government can exercise no control. The laws must be passed by the States. And in regard to a great many questions it is all important that the laws passed by the States should be uniform, in order that commerce may be protected, that individual rights may be protected, and that we may secure the end that we all ought to have in view—the just administration of just laws throughout the whole country."

The objects of the association formed and the experience of lawyers demonstrate the wisdom of the movement, and the desirability of the Georgia Bar Association sending delegates to and connecting itself with the National Bar Association.

Respectfully submitted,

JAMES BISHOP, Jr.
DUDLEY DUBOSE,
EMORY F. BEST,
Committee.

August 2d, 1888.

# APPENDIX No. 4.

## A DDRÆSS

By HON, SEYMOUR D. THOMPSON,

BEFORE GEORGIA BAR ASSOCIATION, AT ITS ANNUAL MEETING IN ATLANTA,
GEORGIA, AUGUST 8, 1888.

### MORE JUSTICE AND LESS TECHNICALITY.

Mr. President and Gentlemen of the Georgia Bar Association:

It seems a matter of regret that, in a hasty preparation, I should have been driven to choose the driest of all subjects for an address to be delivered in the driest of all seasons. And then the thought suddenly flashed across me, that there would be something quite out of place in coming to Georgia to make an appeal for more justice and less technicality. But this discovery, like others of mine, came too late-too late even for an amendment, and I applied in vain for a continuance. For here in Georgia you have had judges that were able to lift themselves above mere technical conceptions to an unusual degree. You had a judge whose name was Nisbet, whose opinions no one can study without pleasure and profit. They were everywhere transfused with the spirit and love They were written in the best language, and abounded of justice. in the loftiest conceptions. You had another judge named Lumpkin, an old man eloquent—a very priest of justice. I have been told that when he delivered his oral judgments, crowds gathered to hear him. Such opinions are landmarks in the growth of the law. Such judges are an ornament to our profession, and an honor to their time. Their labors, best of all, resulted in the doing of justice; and, what was next best, in satisfying the people that justice had been done.

A system of rules built up by the labors of such men, founded upon the highest conceptions of justice, will bear the experiment of being reduced to a code. And you had another citizen, whose

name can never be mentioned without honor, who codified your case-made law, and then died in battle for a cause which commended itself to his conscience and patriotism. His code will not take rank with the great codes of antiquity; but, as the fame of Napoleon's Code will outlast even the memory of his battles, so your Cobb, had he lived, had he achieved the highest distinction in arms, could not have built for himself a monument more enduring than his code, nor left behind a work which could better claim your admiration and gratitude.

Certain qualities are, by common consent, ascribed to the exercise of certain offices. Thus, we expect courage in a soldier, reverence in a clergyman, humanity in a physician. On the same principle we are entitled to expect justice in a judge. A judge without a vital sense of justice, which informs and pervades his whole work, is an unique monster. He is as destitute of that which most becomes his office as is a child without hilarity, an old man without gravity, or a woman without chastity. Our judges are generally just men, in the sense of being impartial between suitors; with that quality public opinion fully credits them. But there is a widely prevailing conception in our profession, both on and off the bench, that the law has nothing to do with justice: that the office of the judge is to administer certain unbending rules, whether in so doing he heals or destroys; and he learns to deliver the consideratum est of every legal judgment with total indifference as to its results. This conception, which divorces the law from justice, had a much stronger foothold in earlier than in later periods of jurisprudence. In the so-called scholastic period of jurisprudence—the dawn of civilization after the middle ages—the effort of jurisprudence was to reduce everything to rules. Even the probative force to be ascribed to certain kinds of testimony was put in the straightjacket of legal rules, and reason itself was drawn out and formulated upon geometrical lines. What was reasonable or unreasonable was to be decided by the judge and not submitted to the jury." The reason was that what was reasonable pertained to the law, since the law itself was the perfection of reason. The judges who so

a "This reasonable time," said Lord Coke, "shall be adjudged by the discretion of the justices before whom the cause dependent; and so it is of reasonable fines, customs and services, upon the particular state of the case depending before them; for reasonableness in these cases belongeth to the knowledge of the law and therefore to be decided by the justices. Quam longum esse debet non definitur in jure, sed pendet ex discretions justificarorum, and this being said of time, the like may be said of things incertain, which ought to be reasonable; for nothing that is contrary to reason is consonant to law." Co. Litt. 56 b.

often announced this conclusion had made the law—had reasoned it into existence. It was their own offspring, and they had the same tender affection for it which the bishops had for the Holy Scriptures. Rules existed for everything, and as fast as a new exigency arose a new rule was created. Some of the reasoning by which these rules were built up seem as fantastic to us as the belief in witchcraft or the evileye. A passage in the debate between the two grave-diggers in Hamlet<sup>b</sup> is undoubtedly paraphrased from the report of a case in Plowden,<sup>c</sup> and is one of

c Hales vs. Petit, Plowden, 253. This was an action for trespass quare clausum, and the question for decision was whether, where the owner of a term in land had committed suicide by drowning himself, and his land had thereafter been forfeited by means of a commission to the Crown, the forfeiture related to the act of drowning or to the time of the death. The question was argued at great length by eminent counsel, with a subtlety which can only be understood by reading the long report. For the plaintiff it was argued, among other things, by Southcote and Puttrel, Serjeants, as follows: "The King shall have no more than the felo de se has in his own right, or which should have come to his executors if he had not been a felo de se. For his forfeiture shall only have relation to the time of the death, and the death precedes the forfeiture. for until the death is fully consummate he is not a felo de se; for if he had killed another, he should not have been a felon until the other had been dead. And for the same reason he cannot be a felo de se until the death of himself be fully had and consummate. For the death precedes the felony both in the one case and in the other, and the death precedes the forfeiture. But, nevertheless, the forfeiture comes at the same instant that he dies; yet in things of an instant there is a priority of time in consideration of law, and the one shall be said to precede the other, although both shall be said to happen at the one instant, for every instant contains the end of one time and the commencement of another. And, accordingly, here the death and the forfeiture shall come together, and at one same time; and yet there is a priority, that is, the end of his life makes the commencement of the forfeiture, though at the same time the forfeiture is so near to the death that there is no mean time between them; yet, notwithstanding that, in consideration of law, the one precedes the other, but by no means has the forfeiture relation to another time in his life."

On the other hand, Walsh, Serjeant, for the defendant, said that "the act consists of three parts: The first is the imagination, which is a reflection or meditation of the mind, whether or no it is convenient for him to destroy himself, and what way it can be done. The second is the resolution, which is a determination of the mind to destroy himself, and to do it in this or that particular way. The third is the perfection, which is the execution of what the mind has resolved to do. And this perfection consists of two parts, vis.: The beginning and the end. The beginning is the doing of the act which causes the death, and the end is the death, which is only a sequel to the act. And of all the parts,



b 2. Clo. The crowner has set on her, and finds it Christian burial.

<sup>1.</sup> Clo. How can that be, unless she drowned herself in her own defence?

<sup>2.</sup> Clo. Why 'tis found so.

<sup>1.</sup> Clo. It must be se offendendo; it cannot be else. For here lies the point: If I drown myself wittingly, it argues an act, and an act hath three branches; it is, to act, to do, and to perform: argal, she drowned herself wittingly.

<sup>2.</sup> Go. Nav. but hear you, good man delver.

<sup>1.</sup> Clo. Give me leave. Here lies the water; good: here stands the man; good: If the man go to this water and drown himself, it is, will he, nil he, he goes; mark you that: but if the water come to him, and drown him, he drowns not himself: argal, he that is not spilty of his own death, shortens not his own life.

<sup>2.</sup> Co. But is this the law?

<sup>1.</sup> Clo. Ay, marry is't; crowner's quest law.

the striking proofs of the fact that Shakspeare was either a lawyer, or that he had at his elbow a lawyer for an adviser, or else that he was not himself, but was some other person, who was a lawyer.

The opinions gravely pronounced by the first grave-digger were scarcely more senseless than those pronounced by the judge in the case above quoted. There were then rules for everything. Certain facts must be proved by certain number of witnesses. Upon the proof of certain facts, certain conclusions followed as mere matter of law, until a vast collection of presumptions, called presumptions of law, was formulated, to the frequent doing of injustice.

The jury had nothing to do but find certain facts, upon which the judge pronounced the law; and if the wretched jurors found the facts contrary to the opinion of the judge, they were liable themselves to punishment. Many of these conceptions still deface our jurisprudence. I do not specially refer to such facts as that two witnesses are still required to the essential fact in certain criminal prosecutions, notably in treason and perjury, and that in many jurisdictions accomplices must be corroborated, or

the doing of the act is the greatest in the judgment of our law, and it is in effect the whole and the only part that the law looks upon to be material. For the imagination of the mind to do wrong without the act done is not punishable in our law; neither is the resolution to do that wrong, which he does not, punishable, but the doing of the act is the only point which the law regards: for until the act is done, it cannot be an offence to the world, and when the act is done it is punishable. Then, here the act done by Sir James Hales, which is evil and the cause of his death, is the throwing himself into the water, and the death is but a sequel thereof, and this evil act ought someway to be punished. And if the forfeiture shall not have relation to the doing of the act, then the act shall not be punished at all.

The opinion of "the Lord Dyer" contains passages not less fantastic: "Sir James Hales was dead, and how came he to his death? It may be answered by drowning; and who drowned him? Sir James Hales; and when did he drown him? In his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die; and the act of the living man was the death of the dead man. And then for this offence it is reasonable to punish the living man who committed the offence, and not the dead man But how can he be said to be punished alive, when the punishment comes after death? Sir. this can be done in no other way but by devesting out of him, from the time of the act done in his life which was the cause of his death, the title and property of those things which he had in his lifetime. \* \* \* If one arraigned for felony stands mute of malice and will not answer he shall forfeit his goods, and the reason is because he refuses to be tried by the law. Then if in these cases \* \* those that fly from the law, or that by their acts, refuse to be tried by the law, shall forfeit their goods and chattels, for the same reason in our case he shall forfeit his goods and chattels, for here he has committed a felony in killing himself, whereby he has exempted himself from the trial of the law; for by his death he has prevented his being arraigned and tried by law, and so he has fled from the law, and by cunning has escaped the sentence and judgment of the law, which is more odious in the eye of the law than if he had fled indeed, or had challenged above the number of thirty-five, or had betaken himself to his clergy before judgment, or had kept himself mute and silent."

the jury are directed to acquit: because there is much reason to retain these rules as conservative of justice. The conception still exists in many jurisdictions that the recent unexplained possession of stolen goods is evidence of guilt as a matter of law, and that the indge is so to instruct the jury, leaving them no alternative but to convict. Innocent men are still (though rarely) sent to the gallows in conformity with presumptions of law, such as the presumption of malice from the use of a deadly weapon, or the presumption of guilt from flight; and in actions for libel, men are still mulcted in exemplary damages on an artificial presumption of malice, where the publication was the result of negligence or accident, or even of the unknown and officious act of an employé. We are gradually rooting these ancient abominations out of the The whole doctrine of legal presumptions, except those conclusive presumptions which rest on grounds of public policy, and those which determine the burden of proof, has had its day and must go. Henceforth, what formerly raised legal presumptions shall be no more than circumstances addressing themselves to the judgment and conscience of jurors.

The ancient law, reduced by the reasoning or unreasoning of the judges to a system of inflexible rules, wrought injustice in so many cases that two successive revolts were led against it; in civil cases, that which gave rise to the jurisdiction of the court of chancerv and to the system called equity; and in criminal cases that which declared that jurors should be judges of the law as well as of the fact. A legal trial was at first an ordeal, in which men proved the justice of their cause by walking on nine hot plowshares, plunging the arm into boiling water without being burnt. or floating when thrown into a pond of water. It was next a battle, in which men fought a duel, under the fantastic conception that God would not suffer the wrong to prevail; and it will startle laymen to have the statement repeated to them that it is but seventy years since the last trial by battle was claimed and allowed in England. A jury trial was a kind of forensic combat, proceeding at every step in conformity with technical rules, under which the judge generally directed the verdict, either in positive terms or in the form of advice to the jury. Parties were privileged, even in civil cases, from giving evidence against themselves. The high-

e Mitchell's case, 12 Abb. Pr. (N. Y.) 249; Cook v. Carn, 1 Overt. (Tenn ) 343; Mauran v. Lamb, 7 Cow. (N. Y.) 174; Owings v. Low, 5 Gill & J. (Md.) 134.



d Ashford v. Thornton, 1 Barn & Ald. 405 (anno 1818.)

est conception of such a trial was that each of the gladiatorial contestants was entitled, within certain limits, to deceive and trick his adversary.

It is to the credit of the Church that this monstrous system was first invaded by it. The chancellor, who in later Roman times was a slave, the gate-keeper of the Emperor, and in early English times an ecclesiastic, holding the office of a minister of state to the king, in his office of keeper of the king's conscience, summoned parties before him by compulsory process, and there searched their consciences by interrogatories which they were obliged to answer upon oath, compelled them to disclose the truth, and thus uprooted fraud. defeated conspiracies, broke down oppression, and administered justice according to the maxims of the Christian religion, the golden rule of doing unto others what you would that others should do unto you, called the rule of equity and good conscience. Those early ecclesiastics were not lawyers. They probably knew little of the Roman law, and still less of the common law of England. But they understood the law of conscience and of right, which is the most certain law, because it is understood by all men in all countries and in all times: that law of which Cicero wrote in the following sublime passage: "There is a true law, the right reason, conformable to justice, diffused through all hearts, unchangeable, eternal, which by its commands summons to duty, by its prohibitions deters from Attempts to amend this law are impious: to modify it in any respect is wrong; to repeal it is impossible. From this law neither senate nor people can relieve us. And it shall not be one law at Rome and another at Athens-one now, another hereafter. But the one eternal and immutable law shall sway all nations for all time, and be the common lord and master of all."s

These ecclesiastics were necessarily affected in favor of Rome. Their eyes were turned steadily towards the Eternal City. They knew that Rome was

> "Parent of our religion whom the wide Nations have knelt to her for the keys of Heaven."

And they may also have known imperfectly what we bette know now, that much of the common law takes root in Rome. They turned to the rich treasures of the Roman law, not only for rules and maxims of justice, but also for methods of procedure. So, against the steadfast opposition of the judges of the common

<sup>/</sup> Cancellarius, gate-keeper.

g Cleero, de Republica.

law, they introduced the foreign exotic. It could not be readily engrafted upon the native stock, but it took root and grew as a separate tree. We have endeavored to blend the two systems of jurisprudence in modern codes of procedure, but they remain substantially distinct, two streams of justice flowing side by side, just as the Mississippi and Missouri rivers are sometimes seen to flow side by side under the bridge at St. Louis. The system of equity itself slowly ceased to be a system of conscience, and in time became a system of rules; and there are judges in our times who, in granting or refusing an injunction, proceed upon conceptions as narrow and technical as those which characterized judges of the common law. But it is, on the whole, a noble system of legal rules, built upon conceptions of pure justice; a lofty and shining temple, not vet perfect or finished in all its details, and never to become so, but ample in its extent, symmetrical in its outline. eloquent in its proportions. Gaze on it with rapt soul and untired eyes, until your own mind, "expanded by the genius of the spot hath grown colossal." Say whether you most admire the edifice, or the long line of architects who wrought so nobly in its building, and who reared

"What former time, nor skill, nor thought could plan.
The fountain of sublimity displays
Its depths; and thence may draw the mind of man
Its golden sands, and learn what great conceptions can."

The second revolt against the narrow and unvielding technicality of the common law took the form of enlarging the power It culminated in the abolition of special verdicts in criminal cases, in the conception of the power of juries to resolve by their verdict all conclusions both of law and fact, and, under the influence of Fox's Libel Act, in making them, in criminal prosecutions for libel, judges of the law as well as of the fact. our country the revolt extended still farther. We were not content to make juries judges of the law in criminal actions for libel. but we declared in many of our constitutions that, in all criminal prosecutions, they should be judges of the law as well as of the fact. You did this in the constitution which you adopted amid the throes of the revolution in 1777. The principle prevailed in your jurisprudence until the year 1871, when it was abolished by a happy stroke of judicial legislation, in a judicial opinion overruling a long line of preceding cases, and putting a new exposi-

Al. Holden vs. State, 5 Ga., 441; Berry vs. State, 10 Ga., 511; Keener vs. State, 18 Ga., 194; McPherson vs. State, 22 Ga., 478; Dickens vs. State, 30 Ga., 383.



tion upon a constitutional provision, without vouchsafing any reason therefor. In the jurisprudence of some States this principle still prevails. It obliges the judge to charge the jury that they are judges of the law and are not bound by his instructions, or even by the decision of the Supreme Court. It allows them to pass upon the constitutionality of statutes. It allows counsel to argue the law to the jury, to read books of law to them in argument, and in some conceptions, even to argue against the law as already laid down by the court in the particular case. This extravagant conception is slowly disappearing from our jurisprudence, and in the Federal and in most of the State courts, the judge charges the jury that they are bound by the law as laid down by the court.

If a continental jurist were told that, in some of the most enlightened States of the American Union, we gather together twelve men from the community at large, first examining them on their voir dire and rejecting them if they are so intelligent as to read the newspapers, and so thoughtful as to have formed an opinion of the case, thereby rejecting the intelligent and selecting the igno-

i2. Const. Ga., art. I., 22, par I.; Ga. Code, 1882, sec., 5019.

f3. Anderson vs. State, 42 Ga., 9, 32, 34; reaffirmed in Hill vs. State, 64 Ga., 454, and (on the principal of stare decisis) in Ridenauer vs. State, 75 Ga., 382, and Danforth vs. State, 75 Ga., 614.

k Illinois: Schrier vs. People, 13 Ill., 17; Fisher vs. People, 23 Ill., 283; Adams vs. People, 47 Ill., 376. Compare Mullinix vs. People, 76 Ill., 211.

Indiana: Keiser vs. State, 83 Ind., 234; Fowler vs. State, 85 Ind., 538; Powers vs. State, 87 Ind., 145, 146.

Maine: State vs. Snow, 18 Me., 346.

Massachusetts: Com. vs. Porter, 10 Met., (Mass.) 263, 283.

Tennessee: Hannah vs. State, 74 Tenn., (11 Lea.) 201.

North Carolina: By statute-see State vs. Meller, 78 N. C., 74.

Fowler vs. State, 85 Ind., 538, 541 (Edliott and Zollars, J. J., dissenting; Hudelson vs. State, 94 Ind., 426, 429; Nuzum vs. State, 88 Ind. 599. Compare State vs. Vincent, 37. La., Ann., 792; State vs. Hannibal, 37 La. Ann., 619; State vs. Johnson, 30 La. Ann., Pt. II. p. 904; Kane vs. Com., 89 Pa. St., 522, 527.

m Kaiser vs. State, 83 Ind. 234; Fowler vs. State, 85 Ind. 538; Lynch vs. State, 9 Ind. 541; Williams vs. State, 10 Ind. 503; Daily vs. State, 10 Ind. 536.

n Power recognized in State vs. Thomas, 47 Conn. 546. Compare State vs. Buckley, 40 Conn. 246.

o Hannah vs. State, 74 Tenn. (11 Lea) 201; Com. vs. Porter, 10 Metc. (Mass.) 263,283,287 (able opinion by Shaw, C. J.)

p Com vs. Austin, 7 Gray (Mass.) 51; Stout vs. State, 96 Ind. 407; McMath vs. State, 55 Ga., 304, 308; Warmock vs. State, 56 Ga. 503; Johnson vs. State, 59 Ga. 142; Jones vs. State, 65 Ga. 506.

q Com. vs. Porter, 10 Metc. (Mass.) 263,283,287; State vs. Verry (Kan.) 13Pac. Rep, 338; see also White vs. People, 90 lll. 117; Lynch v State, 9 Ind. 541.

rant; and then make the ignorant twelve judges of the law, and even interpreters of the constitution, independent in this respect of the judge on the bench—if a continental jurist were told this, he would believe it, because he is ready to believe any fantastic thing which is said about American jurisprudence and American institutions. He would believe it, but he would regard it as the conception of a wild and half civilized people.

But, on the other hand, if we were to turn to his system of jury trial, what may we find? On a summer day in Stockholm, a learned Swedish advocate explained to an American lawver the jury system which obtains in that country. They have, indeed. a jury of twelve; for the jury of all northern nations consists either of twelve, or an aliquot part, or a multiple of twelve. Denmark it is eight, and in Russia the great criminal court consists of thirty-six members, twelve of whom are jurists and twentyfour of whom are lavmen. But in Sweden the jury is what we would call a professional jury. It is an official body, chosen, I believe. for six years. The trial proceeds by methods which very much resemble our courts martial. The evidence is slowly taken down in writing as it is delivered. The case drags along, perhaps for two years. Finally, the written evidence is carefully gone over and stated by the judge. He draws up a legal judgment, in which he announces his conclusion, which is that, according to certain rules of evidence—rules which I have already adverted to, borrowed from the scholastic period of German jurisprudence—the judgment must be given in certain terms, either for the plaintiff or for the defend-Then comes in the remarkable function of the jury, called the næmd. This function is to nod their heads. They regard it as unseemly or indecent, being laymen, and knowing nothing about these rules of evidence, to differ in opinion with the judge. who has studied them and understands them. The jury is therefore in that country a fantastic superfluity. A court with such a jury is like a coach with twelve extra wheels, none of them touching the ground. These rules of evidence, he was told, often result in the doing of palpable injustice—an injustice which is perfectly apparent to the judge, to the jurors, and to both parties, but it is none the less pronounced and executed as the judgment of the

At the interview where this jury system was explained, there was another listener, an American corporation lawyer. He was captivated with the conception of such a system of trial and of such

a jury. The idea of a jury that would nod their heads instead of deciding unjustly for the widow in tears, or instead of bringing in enormous exemplary damages in case of a slight railway injury, was the kind of jury which he wanted. A trial that took place before a judge, where the testimony was not delivered orally and the case crowded to a decision in a single day, but where it dragged its slow length along over two or three years, everything going down in writing and then becoming the subject of a grave analysis by a trained mind, resulting in a verdict formulated upon strict and definite rules of evidence,—all this was captivating to a man who had long been accustomed to being knocked down by the verdicts of juries.

The learned Swedish advocate had written several brochures, endeavoring to persuade the legislature of his country to adopt the English jury system. Our American friend instantly proposed what the Yankees would call a "swap." He said: "If you do not like your næmd, your Swedish jury, you can have ours. We will 'swap' with you, as the Yankees say, and give you something 'to boot.' Just send your næmd over on the next steamer, and we will send back our jury in exchange, with at least a chromo thrown in to make up the difference. From the account which you give of your næmdemen, they will be entitled to cabin passage: but to save expense we will send ours over in the steerage. will put them on board of one of the ships of the Thingvalla line; your gallant Scandinavian sailors shall be charged with their safety; they shall be carefully instructed not to let any of them get washed—overboard, but at the same time they shall be told that if any of them should happen to get washed overboard, it will not be necessary that they, the said sailors, shall peril their own lives in order to get them out."

From this, let us turn to another continental picture. A learned friend related to me the incidents of a trial for forgery which lately took place in a court at Rouen, in France. The prisoner came into the court-room and took a seat, with his counsel behind him. The bar filed in and took their places, the procureur in his place, the audience in theirs. Next the judges came in and, in front of their seats, faced the audience. The audience simultaneously arose. The audience bowed to the judges, and the judges bowed to the audience. The judges then commanded the audience to be seated, but the prisoner remained standing. The

r Geo. W. Taussig. Esq., of the St. Louis bar.

judges then took their seats. The president of the court then drew out a paper, called a *proces verbal*, which had been framed by the *procureur*.

This paper was a literal history of the life of the prisoner, including the incidents of the crime for which he was on trial, all of which had been raked together by police espionage. The president of the court began the proceeding by addressing the prisoner: "Your name is ----?" "Oui, Monsieur." "You were born at Marseilles on such a date?" "Oui, Monsieur." "The name of your father was \_\_\_\_\_?" "Oui. Monsieur." "He was an honest bookbinder?" "Oui. Monsieur." "He took you out of school at fourteen and put you to work at his trade?" "Oui, Monsieur." "You got tired of the book-binder's trade and ran away to Paris and apprenticed vourself to a lithographer?" "Oui, Monsieur, but my father consented." "You stuck to this trade until you learned it very well?" "Oui. Monsieur." "On a certain date you intermarried with Mile. --- ?" "Oui, Monsieur." "You lived with her just six months, and then, I blush to say it, you deserted her and commenced living with ———, a notorious courtesan?"

Here the prisoner began to stammer out excuses, alleging that his wife had first been unfaithful to him. "Have a care, prisoner! Have a care! The jury are listening to you. Evidence will be produced to prove the affirmative of every question which is put to you. After living for some time with this profligate woman. von found that the earnings of your trade were not sufficient to support you both?" The prisoner here began to stammer denials or excuses, and was again interrupted with the like, "Have a care, prisoner! The jury are listening to you! Evidence will be produced against you on all these points. Then, in order to raise money to support the expenses of your new establishment you found means to procure some of the unsigned debentures of the Omnibus General. The signatures to these you deftly forged?" "Non, non, Monsieur; it was not I." "With a package of these in your valise, on the morning of such a day, you took the train from Paris to Rouen?" "Non, non, Monsieur; it was not I." "Have a care, prisoner, the jury are listening to you! Your contumacy may increase your sentence! Arrived at Rouen, you went first to the house of Messrs —— & Company, bankers, and offered some of those debentures for sale?" "Non, non, Monsieur." etc. "Have a care, prisoner," etc. "They declined, on the

ground that they did not care to have so small a transaction." Here followed the usual protestations and the usual cautions. "You next went to the bank of ---- Brothers and renewed the offer?" Non, non, Monsieur," etc., with the usual caution from the judge. "They declined on the ground that they did not care to have a financial transaction with a stranger. Then you went to the bank of M. ----, and renewed the offer at a still larger discount. M. -- examined the bonds, and so deftly had you committed the forgery, that he believed them genuine, and purchased them of you. You then hastened to the station to take the train, which was about to leave for Paris. There, in the excitement of getting aboard, you left your value, containing the debentures which you had not disposed of, many of them unsigned, with other identifying evidence?" "Non, non, Monsieur; it was not I, it was someone else. The police arrested the wrong man." Here follow the usual cautions, and further questions, bringing the prisoner down to his arrest by the police, with the usual interrogations as to the explanation which he attempted when arrested, etc. Next, evidence is produced supporting literally the affirmative of every interrogation in the proces verbal. Every species of evidence is let in, and hearsay evidence is never rejected. Crossexamination is confined to a few questions suggested by the prisoner's counsel, and put or refused by the judge in his discretion. With this case made against him, the prisoner produces two or three witnesses and attempts to prove an alibi, and of course fails. The procureur announces that he does not wish to address the jury. Counsel for the prisoner then rises behind his client, and stammers out a few remarks in extenuation or mitigation. "Perhaps the evidence is not as conclusive as it may seem. Perhaps the case of the unfortunate prisoner is not as black as it may appear-at least, many of the unfortunate circumstances ought to be considered in the mitigation of the severity of the sentence." The jury return a verdict of culpable, without leaving their seats, and the judge sentences the wretch to a term of penal servitude.

Turn from this picture to our own jury trial. Suppose a French advocate were to enter one of our courts for the first time pending a criminal trial. The first thing which would strike him would be the struggle of the counsel to prevent the jury from hearing the evidence. A witness is detailing a transaction, and, having stated what was done, he proceeds to state what was said, when he is interrupted with, "Stop, stop, stop; hold on there." Then a con-

siderable time is expended in a wrangle, in the presence of the jury, as to whether the question shall be answered. The witness proceeds, and has hardly articulated another sentence when the same, "stop, stop," is thrust into his teeth. Then, when this stage of the wrangle is past, and the judge comes to instruct the jury, although in theory of law they are conclusively able, without his aid, to discharge the function of deciding the facts, and although he is prohibited from intimating, directly or indirectly, his own opinion upon any essential point of fact—vet he proceeds to give them, in the form of cautionary instructions certain rules for weighing the evidence and determining the credibility of the witnesses. He endeavors to convey to their minds a conception of the presumption of innocence which attends the prisoner at every stage of the trial, and of the strength of the evidence necessary to overcome that presumption. In other words, he tries to explain to them the strength of belief which they must have in order to convict—thus lifting the matter out of the domain of ordinary judgment and conscience into the domain of legal technicality. He takes two words, than which no two words in our language are perhaps simpler or more plainly expressive of a definite meaning the words "reasonable doubt." He paraphrases them, he expands them, he attenuates them, he twists them this way and that, he torments them into all sorts of technical shapes. He tells them that it is "not a possible or conjectural doubt," " "not a possibility of doubt:"" "not a chimerical doubt or a groundless conjecture:"" "not a mere misgiving of the imagination, suggestion of ingenuity or sophistry." a "not a mere guess or surmise;" b "not a fanciful conjecture or strained inference;" o "not the skepticism which can conjure up an argument;" " not a may-be-so or might be-so." •

Having multiplied negatives in telling them what it is not, he endeavors to tell them what it is. He tells them that it is a "serious, substantial, well founded doubt:" that it is "a fair

x Dun ve. People, 109, Ill., 635, 644; May ve. People, 60 Ill., 119; Miller ve. People, 39 Ill. 457; Connaghan ve. People, 88 Ill., 460.

y Minich vs. People, 8 Colo. 454; Earl vs. People, 73 Ill. 334;

z State ve. Pierce, 65 Ia., 89, 90.

a State ve. Murphy, 6 Ala. 846, 851.

b United States re. Johnson, 26 Fed. Rep. 682, 685.

c United States vs. Johnson, 29 Fed. Rep. 508; S. C., 9 Crim. Law Mag. 325.

d Com. vs. Carey, 2 Brewst. (Pa.) 401, 406.

e Giles ve. State, 6 Ga. 273, 279, 285.

<sup>/</sup> Kennedy 26. People, 40 Ill. 488,497.

doubt, growing out of the testimony;"h that it is "a doubt founded in every-day common sense and judgment;" that it is "actual, and not technical disbelief;" that it is a probability of innocence, that it is "something more than a probability, and less than an absolute certainty of guilt: that it is "something less than a sentiment clear and strong in favor of a conviction; " that it is "a doubt arising out of the evidence." or "the want of evidence." and that "they must not go outside of the evidence to hunt for doubts." He also tells them that it is "a doubt for which a good reason can be given;"q that there must be a "moral certainty," or "a reasonable and moral certainty," or an "abiding conviction" of guilt; or a conviction "which a man would act upon in matters of the highest concern and importance to his own interest," u or "such as would cause a prudent man to pause and hesitate in his own most important affairs." And so on, through an almost endless catalogue of pertinent suggestion, fantastic deviation, or metaphysical diffusion. At every stage in this process, the trial judge runs great risk of reversing any conviction which may be obtained. If, in defining reasonable doubt, he lets slip the word "captious," a new trial must be

h People ve. Finley, 38 Mich. 482.

i State ve. Elsham (Ia.) 31 N. W. Rep. 66.

i Com. vs. Harman, 4 Pa. st. 269,272.

k Bain vs. State, 74 Ala. 38.

l State vs. Rounds, 76 Me. 123.

m Bowler ps. State, 41 Miss. 571, 578.

n Cicely vs. State, 13 Sm. & M. (Miss.) 202, 210; United States vs. Foulke, 6 McLean (U. S.) 349, 355.

o State vs. Porter, 34 Ia, 131, 135; Earl vs. People, 73 Ill. 330, 333.

p Earl vs. People, supra.

q United States vs. Jackson, 29 Fed. Rep. 503; S. C., 9 Cr. Law Mag. 325; People vs. Steubenvell, (Mich.) 8 Crim. Law Mag. 265; State vs. Meyer (Vt.) 3 Atl. Rep. 195, 196.

r Reg. vs. Sterne, cited in Best on Evidence 395 and in 3 Greenl. Rv. 329; Com. vs. Costley, 123 Mass. 1, 23; State vs. Vansant, 80 Mo. 67, 72; Dunn vs. People, 109, Ill. 635, 644; McKleroy vs. State, 77 Ala. 95, 97; Coleman vs. State, 59 Ala. 52; People vs. Padillia, 42 Cal. 535, 540.

s Com. vs. Costley, 123 Mass. 1, 23.

t Com. vs. Webster, 5 Cush. (Mass.) 295, 320; Dunn vs. People, 109, Ill. 635, 644; State vs. Pierce, 65 Ill. 89, 90; Miller vs. People, 39 Ill. 463, 464; Minich vs. People, 8 Colo. 454; State vs. Vansant, 80 Mo. 67, 72; People vs. Ashe, 44 Cal. 188, 290; James vs. State, 45 Miss. 572, 575.

u Stark. Ev. 9th Am. ed. 265; 3 Green!. Ev. 14th ed. 230, note a.

v State vs. Kearley, 26 Kan. 77, 87. Compare Polin vs. State, (Neb.) 16 N. W. Rep. 888, 900; S. C., 14 Neb. 540; State vs. Nash, 7 Ia. 350, 385; United States vs. Jackson, 29 Fed. Rep. 503; S. C. 9 Crim. Law Mag. 325; United States vs. Wright, 15 Fed. Rep. 112. 114; People vs. Dewey (Idaho), 6 Pac. Rep. 103, 106.

had. At one time, in my State, if he told the jury that it was a "real" doubt, the like consequences followed. But our Supreme Court, while clinging to its disapproval of the use of the word "real," have more recently concluded not to order new trials, because the trial judge has employed it. If, in one jurisdiction, the trial judge tells them what, as just seen, some decisions sanction, that it is "a probability of innocence," away goes the labor of the whole trial. The same result would follow if he were to tell them that it is such a doubt as makes them feel "uncertain whether to convict or not." If he ventures to direct their minds to the standard, by which they would be guided in their own most important affairs, he must first search carefully the reports of his own Supreme Court; for he runs great risk of a reversal, according to numerous holdings.

And, finally, if the trial judge, forgetting where he is, goes to the wild length of instructing the jury that "the law contemplates that juries of the country, in exercising their judgment in such matters, will act in a sensible, rational manner, and give in all cases no more and no less weight and credit than is rightfully due," the judgment must be reversed.4 It is an invasion of the province of the jury to direct their minds to the standard of common sense: since they are at liberty to decide only according to the technical sense which they receive in a short lesson from the Then, although in theory of law the jury are supposed to have the highest capacity for weighing the evidence, for distinguishing the false from the true, the judge proceeds to give them a series of cautionary instructions as to the manner of weighing evidence in various phases of the case—as to the probative value of circumstantial evidence, the evidence of confessions, the maxim falsus in uno, falsus in omnibus, the value of evidence of character, of negative testimony as distinguished from positive testimony.

e Contra: People ve. Finley, 38 Mich. 482; State ve. Elsham (Ia.) 31 N. W. Rep. 66.



w State vs. Swayne. 68 Mo 606, 616.

x State ve Owens, 79 Mo. 620, 681; State ve. Smith, 21 Mo. App. 595.

y State vs. Payton (Mo.), 2 S. W. Rep. 294.

z State ve. Blunt (Mo.), 3 S. W. Rep. 394.

a Browning ce. State, 30 Miss. 657, 672.

b State vs. Ah Lee, 7 Ore. 237, 258.

c Bradley vs. State, 31 Ala 492, 498, 504; People vs Brannon, 47 Cal. 96; Territory vs. Bannigan, 1 Dak. Ter. 452, 465; State vs. Dineen, 10 Minn. 498; State vs. Crawtord, 32 Mo. 200; Jane vs. Com. 2 Metc. (Ky.) 30, 34; State vs. Oscar, 7 Jones L. (N. C.) 305.

d Sisk vs. State, 9 Tex. App. 246; Densmore vs. State, 67 Ind., 306.

the caution to be employed in respect of the defense of *alibi*, and other like elements of proof—until he has either thoroughly frightened them or thoroughly convinced them that they are not to decide according to their real belief, founded on what the witnesses have told them, but according to some artificial conceptions which they but feebly understand.

Thus bewildered and dazed, they are, in my State and several other States turned over to the advocates, to be played upon or further confused by their skill and cunning. But here there are similar attempts, generally wise, when we consider the infirmity of this tribunal, but often fantastic, to restrain the speeches of the advocates within reasonable limits. The judge may, indeed, in his discretion, limit the time of the advocates; 'though in two States this is prohibited by statute."

But if he limits the counsel for a thief to the half hour which was allowed to Cicero to speak in defense of Caius Rabirius, on a charge of murder, on an appeal from the Duumviri to the people, he runs the risk of having to try the cause over again. Not that abuses of discretion in this regard are to go uncorrected by the appellate tribunals. The discretion of limiting the time for argument, especially in criminal cases, is an extremely delicate one. The cases must be very plain—the occasions very rare—where the judge will attempt such a limitation in advance, thus presuming to determine what length of time is necessary to enable counsel to say all that may fairly and properly be said in behalf of his client. But, on the other hand, most judges and lawvers of experience will agree that the conception is equally extravagant, no matter from what distinguished source emanating, that the power to restrict the time of argument should be taken away from the judges altogether, thus allowing counsel, by "talking against time," to protract the trial of a single cause indefinitely, to the delay of other suitors, or until a mistrial is produced by the lapse of the term. The true view seems to be that, while the court should not limit counsel in advance in important or difficult causes, yet where the judge sees that counsel have talked them-

f 9 Crim. Law, Mag. 614, 615; 2 Thomp. Tr. 2923 et seq.

g Miller Rev. Code (Iowa), 2783; Hall vs. Wolff, 61 Iowa, 559, 562; State vs. Miller, 75 N. C. 73, 75. Compare State vs. Collins, 70 N. C. 241.

A Dille vs. State, 34 Oh. St. 617; Compare Hunt vs. State, 49 Ga. 255.

i See the observations of the Hon. Daniel Dougherty in his address before the last meeting of the New York Bar Association, advocating the view that the power of limiting the time of argument should be withheld from the judges. 22 Am. Law Rev., 185.

selves out—that they have worn the subject threadbare and are going back and traveling their ground over again—he should not hesitate to stop them, and should be upheld in such an exercise of discretion.

Then, in respect of the matter of the argument, counsel for the prisoner are practically unrestrained; but in some jurisdictions if the prosecuting attorney, or the counsel for the unsuccessful party in a civil action, spreads his arms too widely, pitches his voice at too high a key, or makes the traditional American bird scream a little too loudly, the judgment is reversed and a new trial granted. I am not arraigning all courts, nor a majority of them: but our recent books of reports abound in cases of reversals for mere slips of the tongue. For the error of stating some matter which is not in evidence, thus conceding the incapacity of the jurors to discriminate between what is in evidence and what is not: for expressing belief in the innocence of the prisoner; for alluding to former trials or reversals of the same case; for appealing to local," or to religious prejudice, and for other extravagances of statement or declamation, the catalogue of which could be greatly extended P

Do not think that I criticise the mass of these decisions. I agree that causes must be tried according to settled rules of evidence, and that the exuberance of advocacy must be restrained within reasonable limits. This is absolutely demanded by our every day experience with the infirmity of this species of popular tribunal. And there is nowhere to be found a nobler sketch of the true limits allowed to counsel in arguing causes to juries than that given by your own Nisbet in *Mitchum vs. State*<sup>a</sup> which received the honor of being copied almost literally, but without quotation points or credit, into a leading decision of the Supreme Court of New Hampshire, from whence it has, through

r Tucker co. Henniker, 41 N. H. 317, 324. A friend of mine suggests that, as the war had just broken out, this was on the principle of confiscating rebel property.



f 1 Thomp. Tr. p. 747, and numerous cases cited.

k Pierson vs. State, 18 Tex. App. 524, 563. In this case, while the practice was condemned, a new trial was denied.

l Hatch ve. State, 8 Tex. App 416; Moore ve. State, 21 Tex. App. 666.

m Humphrey ve. State, 21 Tex. App. 666, 668.

a School-Town of Rochester ps. Shaw, 100 Ind. 268.

o Rudolph vs. Landwerlen, 92 Ind. 34, 39

p 1 Thomp. Tr. p. 761 et seq. : and cases cited.

q 11 Ga. 615.

other transplantings, become a part of our American jurisprudence. Nor is there to be found in any book a loftier or more eloquent exposition of the privileges and duties of an advocate in this regard, than is to be found in the opinion of your own Lumpkin, in another case decided about the same time. "Under the fullest inspirations of excited genius, they may give vent to their glowing conceptions in thoughts that breathe and words that burn. Nay, more, giving reins to their imagination, they may permit the spirit of their heated enthusiasm to swing and sweep beyond the flaming bounds of space and time—extra flammantia moenia mundi. But let nothing tempt them to pervert the testimony, or surreptitiously array before the jury facts which, whether true or not, have not been proven."

We have advanced so far beyond the conceptions of our English ancestors and of our English brethren of to-day, that in many of our American State jurisdictions we have sealed the mouth of the judge upon all questions of fact. We have prohibited him from advising the jury upon questions of fact, though in some jurisdictions we still permit him to state the testimony, as well as to declare the law. But he is not to intimate any opinion upon questions of fact. His trained experience in seeing through subterfuges on the witness stand, in detecting perjuries, in perceiving the difference between an honest embarrassment and a conscious falsehood, all this is thrown away in our modern American jury trial. Twelve men, selected for their ignorance, are raked together from the body of the community, representing all trades and occupations, and in many cases no trade or occupation; and in this new and strange situation they are to pass upon the life or the fortune of a fellow man. If we were not raised under this system and wedded to it, could anything seem more fantastic to us? What is more difficult than sifting the truth where the testimony is delivered by a number of opposing witnesses? How valuable must be the experience of one who has long dealt with such mat-But we here proceed upon the conception that ignorance is better than experience—nay, even that experience is dangerous or polluted. If the judge even casually intimates an opinion upon any essential fact of the case a new trial is granted. Suppose, instead of deciding the momentous question of the life, liberty or fortune, of a human being, some lesser human office

s See, for instance, Hatch vs. State, 8 Tex. App. 416, 423.

t Berry ve. State, 10 Ga., 511, 522.

were to be performed. Suppose a ship were to be navigated acress the Atlantic ocean. Suppose we had a navigation law that placed an experienced navigator upon the deck and then selected for him a crew of twelve men from a larger body of men, gathered together from the community by a sortition, from whom, after a careful examination into the qualifications of each, all should be rejected who had formed or expressed an opinion about navigating the particular ship. Suppose we should put the captain in charge of this crew, and should then prohibit him from giving any orders or directions touching the navigation of the ship, or even intimating an opinion as to what ought to be done in an emergency. beyond giving them a general discourse upon the art of navigating such a ship, would this be much more absurd than our present iury system?

But these same twelve men, these same ignorant twelve, whom we have made independent of the enlightened experience of the iudge upon all questions touching the credibility of witnesses. the weighing of evidence and the drawing of inferences of fact. whose ignorance, in several jurisdictions, we have placed above the learning of the judge, even above the learning of the Supreme Court, on all questions of law, -- how do we treat them? Do we treat them in a manner which comports with functions so dignified? Do we argue to them as we argue to the judge? Has a reversal ever taken place for misconduct in arguing to a judge? Have not a hundred taken place for misconduct in arguing to juries? We do not even treat them with the deference, which the Hindoostanee extend to their sacred cattle. In ancient times. we coerced them into a verdict by shutting them up in a dark room and keeping them there without food, drink, fire or candle, until they came to an unanimous conclusion; or if they were obstinate, we trundled them around, hungry and dry and cold, in carts from circuit to circuit. In modern times we cage them, we watch them, we suffer them to speak to no one and no one to speak to them." We will not allow them to take the depositions to their room; but we compel them to make up their verdict from their memory of the testimony, as they have heard it. We do not allow them, except where the rule is changed by statute, " to take notes of the testimony and take them to their room: \* and we conceive that the intelligence necessary to perform

<sup>\*</sup> Thomp. & Mer. Jur. \$310 et seq.

v 2395

w H02.

<sup>«</sup> Cheek ve. State, 35 Ind. 492, 495.

the exalted functions which I have described, may be overturned by the vitiating presence of the county atlas, or of a law book in the jury room, while a verdict in which the term of imprisonment is arrived at by the fine judicial process of "chalking and averaging, is a thing which we easily endure." We go further: we set aside their verdict if the judge ventures to instruct them that they are to allow common sense to be their guide in arriving at it, as though it would be a species of contempt for them in performing their functions, to make use of something which the appellate judges manifestly do not possess.

To cap the climax, we refuse to listen to any explanations from them as to how they arrived at their verdict, no matter how singular it may be. It may have been a mere toss-up verdict, which is often the case, but we refuse to hear their affidavits disclosing the fact. If, however, the bailiff, or an officious outsider, with his eye or his ear at the key-hole, can discover the vitiating fact. we readily listen to his affidavit.

Then when we come to the rules of evidence upon which we submit cases to the twelve in prosecution for crime, what do we see? If it is an indictment for larceny, we conclusively presume guilt from the fact of having found the recently stolen goods in the possession of the defendant, and from his failing to vouchsafe any explanation at the time, when, although innocent, his pride and sense of injured dignity may have withheld the necessary explanation. If it is an indictment for libel, we conclusively ascribe malice to the publication of the defamatory matter, although it may have been the result of mere negligence, or even of accident. In general, there remains in our American jurisprudence a considerable catalogue of artificial presumptions, the law undertaking to ascribe certain conclusions of fact to certain facts. These presumptions the judge rehearses to the jury in his instructions.

y State ve. Lantz, 23 Kan. 728.

z 2 Thomp. & M. Jur. 2391.

a Cochlin vs. People, 93 Ill. 410.

b Densmore ve. State, 67 Ind., 306; Sisk ve. State, 9 Texas, App. 246.

c Thomp. & M. Jur. 2440 and citations.

d State vs. Doon, R. M. Charlt. 1: Oeven vs. Warburton, 1 Bos. & Pul. 326; Straker vs. Graham, 4 Mees. & W. 721; Vasie vs. Delaval, 1 T. R. 11.

e Thomp. & M. Jur. p 515 n. 3.

f Oeven vs. Warburton, 1 Bos. & Pul. 326. See also Cluggage vs. Sevan, 4 Binn. (Pa.) 150.

Such instructions necessarily have the effect of impressing upon the jury that they are not to weigh the evidence in the scales of their natural intelligence—that they are not to proceed to belief by their free volition, but by artificial or technical modes of reasoning; and the result is that what should be mere evidentiary circumstances, to be weighed by them in the scales of their experience, become the artificial means of conducting them to results which are often at variance with the real truth and justice of the case.

On the other hand, we clothe the accused with a privilege of concealing the truth, which, so far as I know, exists only in the Anglo-American systems of jurisprudence. We not only do not oblige him, by any compulsory process, to give evidence against himself, but we do not even allow him to be interrogated upon his trial in respect to his knowledge of the charge made against him; though if, before the trial, the prosecuting officers can get a confession out of him by a detective trick, or by any species of fraud. short of violence, threats or promises, it may be detailed in evidence, subject to all the imperfections which attend evidence of this kind. He who, of all others, knows most upon the question whether he is guilty or innocent, who of all others, if innocent, can offer the best explanation, is allowed to sit mute in the presence of the jury. And while the more humane conceptions of recent times have clothed him with the privilege of taking the witness stand if he will, yet if he will not, no allusion can be made to the circumstance in argument; and if the prisoner's counse alludes to it and justifies it, the State's counsel is prohibited from making any reply.<sup>5</sup> And so tender is the law of this right of the accused to conceal the truth, that an instruction to the jury, admonishing them to pay no attention to the remark, will not cure the prejudice.h In every other situation, the jurors are allowed to draw what inference they will from the failure of a party who can produce evidence, to produce it, and such failure is the subject of fair comment in argument. But here the tenderness of the law toward persons accused of crime is so great, that the ordinary methods by which men reason in arriving at the

eState ve. Brooks, 92 Mo. 542. fl Thomp. Tr., \$1001.

g Com. vs. Scott, 123 Mass. 239.

A State ve. Balch, 31 Kan., 465; S. C., 2 Pac. Rep., 609.

iThomp., Tr. 22453, 794, 795.

j Id., §989.

truth are to be put aside. A hardened counterfeiter or thief sits in the prisoner's dock, and he above all others could, if he would, and would if he could, explain the inculpatory circumstances shown in the evidence against him. But it is his privilege to say not one word: and, lest the jury should draw from his silence that inference which the experience of men draws in every other like situation from the failure of him to explain who best can explain. the prosecuting attorney is not to allude to the circumstance in argument, but is to assist, by his silence, in concealing from the jury, if possible, the fact that the law allows the prisoner to take the witness stand and explain if he can. In many cases such efforts are not only ineffective, but are puerile. Und-r statutes and modern holdings, the fact that a venireman has formed or expressed an opinion of the guilt of the prisoner from reading the newspapers, is slowly disappearing from our jurisprudence as a ground of challenge, and the intelligence of jurors, in common with that of the entire community, is rising from year to year. With this increase of intelligence in the jury box, it will be difficult to assemble a jury to try a criminal cause, who are so ignorant as not to know that the law extends to every accused person the privilege of being a witness for himself. They will justly regard it as a privilege which was intended to be the shield of the innocent, and which is not to be turned into a shield of the guilty. They will know that an innocent man, who can explain, will always attempt to do so. They will bring to the discharge of their duties the processes of reason upon which men proceed in the ordinary affairs of life. They cannot be trained, for the purposes of a single trial, to stultify common sense, in order that guilt may be screened and crime go unpunished. Any attempt to reach such a result, by withholding from their minds a knowledge of the state of the law on the subject, must be as fantastic as the attempt of the motherly hen, which has hatched a brood of ducklings. to keep them from the water. The processes by which men reason cannot be reversed by legal theories or instructions from the bench. The privilege of withholding evidence and of concealing the truth is an abomination which must be rooted out of the law.

The maxim, nemo seipsum accussare tenetur, was a protest against the inquisitorial mode of trial which exists in France and other Continental countries, an example of which I have given; a mode of trial which exists in our law in the single case of proceedings for contempts, which proceedings were introduced by the courts

of chancery and borrowed from the ordinary criminal procedure: of the Roman law: a mode of trial under which it is well known that innocent men are frequently convicted upon mere police theories: a mode of trial under which a criminal prosecution becomes the most effective engine in the hands of a despotic government for the disposal of its enemies: a mode of trial unsuited to the maxims of freedom and to the needs of a free people. But in our protest against this mode of trial, we have gone to the opposite extreme of clothing the prisoner with the privilege of being his own witness and of attempting, at the same time, to suppress the natural inferences which flow from his refusal to become such. It is believed to have been a protest against the ancient and mediæval practice of extorting confessions from accused persons by torture. It was appropriate to a time when an indicted person was not even allowed to produce witnesses in his behalf, since no one was permitted to testify against the king: when he was not allowed the benefit of counsel, since counsel were not allowed to speak against the king; when, if he declined to plead, either through contumacy, fright or stupidity to an indictment in an unknown language, he was put in an iron machine and pressed to death, though under the more generous spirit of later times he was mercifully hanged. The true conception of the maxim is, that a man shall not, by any compulsory process, be subjected to the process of trial by interrogation, which characterized the Roman civil law, and which still characterizes the law of the States of Continental Europe.

But our courts have not been content with leaving this maxim where our constitutions have placed it—an immunity in favor of one charged with crime against testifying as a witness against himself' Some of our judges have run forward with an alacrity which has extended it so far as to mean that no species of evidence obtained from the prisoner by force shall be detailed in court against him. They have not, of course, carried this conclusion to its legitimate results. They have declared it in some instances, and left it undeclared in other instances equally appropriate. Thus, in this state of the law, if a highwayman assaults me and robs me of my watch, and makes his escape, and is afterwards

k The language of nearly all our constitutional provisions embody this conception. The fifth amendment to the Constitution of the United States embodies it in the following words: "Nor shall be compelled in any criminal case to be a witness against himself." The Constitution of Missouri declares it thus: "No person shall be compelled to testify against himself in a criminal cause."



searched for, discovered, and arrested on suspicion of being the man wanted, and is subjected to a forcible search, and my watch is found concealed about his person, the officer or person who thus searches him will be allowed to give in evidence the fact that he searched him, and in this way found the watch. No judge would think of excluding such evidence. No court has ever decided that it is to be excluded. And vet this is clearly a species of evidence obtained from the prisoner by force. But let us carry the supposition further. I resist the highwayman, as I am entitled to do, with a knife. I stab him in the arm in the struggle, a fact which is known to me at the time. He releases himself from me and escapes. He is found some days afterward, and is arrested on suspicion of being the man who made the assault upon me. The officer or person making the arrest knows of the fact that in the struggle I stabbed him in the arm. He forcibly strips him of his clothing and discovers the wound. The fine juridical wisdom which is seated upon some of our appellate benches will not allow the officer to give this fact in evidence. If he had succeeded in his attempt to rob me, a disclosure of incriminating evidence could be wrung from him by searching his person and finding the watch; but as he failed in the attempt, he became a sort of darling of the law, clothed with the happy privilege of concealing the truth. But let us carry the parallel further. Suppose that I had. instead of procuring his arrest and indictment, simply brought an action for damages against him for the assault and battery? Leaving out the fine conception of the old common law, that my right of action was merged in the felony, swallowed up in the superior right of the State to prosecute this darling, whom it had clothed with this privilege of concealing the truth—suppose I had simply sued him for an assault and battery. He could have come into court and demanded that I strip and exhibit my wounds to a commission of expert surgeons.1 At least it would have been within the discretion of the court to subject me to this exposure," and under some conceptions the court would have been bound to do it. On the other hand, under my indictment against him, if the officer who pursued and apprehended him, had brought him back near the scene of the assault, and compelled him to put his shoe in a track found in the field, for the purpose of ascertaining

l Sibley vs. Smith, 46 Ark. 275; S. C., 55 Am. Rep. 584; Miami etc. Co. vs. Baily, 37 Oh. St. 104.

m 1 Thomp. Tr. p. 654, cases in note 1.

whether he was the real man, that fact could not be given in evidence against him."

And if, for the purpose of ascertaining whether the accused is the guilty man, or an innocent man who is being prosecuted by mistake, a pan of soft mud is brought into court and the prisoner is asked in the presence of the jury to put his foot into it, and declines, the prosecuting attorney will discover when he comes to the Supreme Court that he has put his foot in it. The prisoner's foot cannot be thus measured, for the purpose of ascertaining whether he is guilty or innocent: for, in the opinion of appellate courts, this would not be a measure of justice: nav. an opportunity thus to have his foot measured—such is the vitiating effect of the truth—cannot be tendered to him in the presence of the jury.º Such is the fine discrimination of the law, that if the question concerns the identity of a man, he cannot be subjected to any forcible inspection, when defending an indictment for crime for the purpose of ascertaining his identity; but if the question concerns the identity of a dog. I can serve notice on my adversary to produce the dog in court, and give secondary evidence of the dog if he refuses to do so; and, under a well known rule, he will thereafter be precluded from producing the original for the purpose of rebutting my secondary evidence.

But if the jury should, in order to assist their deliberations, resort to the evidence of their senses—to natural evidence—which is the best and highest evidence upon which men can act; if, without leave of the court, they were to make an inspection, during the progress of the trial, of the scene of the crime, the knowledge thus acquired would have, in such juridical conceptions, such a vitiating effect as to set aside their verdict, if it should be a verdict of guilty a. Nay, if the court order a view by the jury in a criminal case, there being no statute authorizing it, a conviction will be set aside and new trial ordered. Thus, where the indictment was for hog-stealing, a glimpse by the jury of the hog, authorized by the court, had such a vitiating effect that their verdict of guilty was not permitted to stand. And where, in a case

a Day vs. State, 63 Ga. 667. Contra, Walker vs. State, 7 Tex. App. 246, 265, where the examining magistrate had compelled the accused to make his foot-prints in an ash-heap.

o Stokes ce. State, 5 Baxter, (Tenn.) 619; S. C. 2 Tex, Law Journal, 243.

p Lewis vs. Hartley, 7 Car. & P. 405. Compare Line vs. Taylor, 3 Fost. & Fin. 731; Hunter vs. Allen, 35 Barb. (N. Y.) 42.

q Rastwood vs. People. 3 Park. Cr. (N. Y.) 25, 52; Compare Conyer vs. Boyd, 55 N. Y.

r Smith ve. State, 42 Tex. 444.

of murder, the court sent the jury out to view the scene of the homicide, first inquiring of the defendant's counsel whether he objected, and being answered that he did not, the proceeding was regarded as "extraordinary," and a new trial was granted."

Passing these hair-drawn conceptions, we find others equally attenuated. An unauthorized view, or a view authorized without the sanction of a statute, will upset a conviction in a criminal case, on the conception that the jury thereby acquire evidence which was not detailed to them in open court. Where there is a statute authorizing the view, the prisoner must accompany them. because it is his constitutional right to be present whenever any evidence is presented to the jury—it violates his constitutional right of meeting the witnesses against him face to face. But while this is so, it is irregular to send out witnesses with the jury to make the view, although the prisoner goes out with them:" and finally, the knowledge acquired by the jury in making the view, whether the prisoner is with them or not, is not evidence at all, which they can regard in making up their verdict, veven where the question is whether the land which they have looked at is dry land or swamp land." The court must instruct them to disregard it as evidence in making up their verdict.\*

They are to forget what they saw when making the view, reverse the ordinary processes by which the mind arrives at that state called belief, expel it from their memories, if they can. Juridical wisdom, at least, requires the judge to order them to do this, but whether they are able to do it is a matter which the law defers to Divine Providence. And finally, what the jurors have seen in making the view not being evidence at all, although the statute authorizes the view and the judge has ordered it, it follows that, although there has been a view and the bill of exceptions

s Bostock vs. State, 61 Gs. 635, 639. It should be stated that other courts, English and American, have perceived nothing to afford ground for new trial in the fact of the jury making a view, although not in the presence of the prisoner. Com. vs. Knapp, 19 Pick. (Mass.) 496, 515; Reg. vs. Martin, L. R. 1 Cr. Cas. Res. 378.

t State vs. Bertin, 24 La. Ann., 46; Carroll vs. State, 5 Neb., 32, 35; Benton vs. State, 30 Ark., 328, 348; People vs. Bush, 71 Cal., 602; S. C., 10 Pac. Rep., 169 (overruling People vs. Bonney, 19 Cal., 426).

u People vs. Green, 53 Cal., 60.

v Chute vs. State, 19 Minn., 271, 281; Brakken vs. Minneapolis, etc. R. Co., 29 Minn.,

w Wright vs. Carpenter, 49 Cal., 607, 609.

<sup>2</sup> Close vs. Samm. 27 Ia., 503, 507 (Wright, J., dissenting); Wright vs. Carpenter, 49 Cal., 607, 609; Heady vs. Turnpike Co., 52 Ind., 117.

ing been made, it contains all the evidence.

From these fine-drawn conceptions, the pendulum swings to the opposite point, where the conception is that, when a jury have made a view, they are entitled to decide upon their personal knowledge enlightened thereby, and that, in making the view, and in so deciding, they are judges both of the law and fact.

Now, you know exactly what the law on this interesting subject is; now you see it, and now you don't see it. You wire in and you wire out, and at the conclusion of your wrigglings you find yourself where you first began. You begin to realize the profundity of the conception of the great Goethe, when he pronounced jurisprudence the nonsense of reason:

"All rights and laws are still transmitted,
Like an eternal sickness of the race,
From generation unto generation fitted,
And shifted round from place to place;
Reason becomes a sham, beneficence a worry;
This to consider there's alas no hurry."

So we will slip it over and pass it by.

This is what is called in popular phrase "technicality," a word which has come to be one of the most odious in our language.

Instances such as the foregoing could be multiplied almost without end, to illustrate the wide gap between legal sense and common sense, or rather, to prove that what is called legal sense is often the rankest nonsense. What defense do we lawyers always interpose when accused of thus expelling common sense from the administration of justice? It is, that what is called legal technicality produces certainty. But the jumble through which I have just conducted you, though full of legal technicality, is utterly destitute of any element of certainty; and every title of the law abounds in such labyrinths. The eminent jurist, Hon. Thomas M. Cooley, who preceded me in the office which I am attempting to perform, succeeded no doubt in convincing you

y Jeffersonville etc. R. Co. vs. Bowen, 40 Ind., 545 (overruling Evansville etc. R. Co. vs. Cochran, 10 Ind., 560). Compare Washburn vs. Milwaukee etc. R. Co., 59 Wis., 364, 368; Neilson vs. Chicago etc. R. Co., 58 Wis., 517; Parks vs. Boston, 15 Pick., (Mass.) 198, 199, 209.

s Remy vs. Municipality No. 2, 12 La. Ann., 500, 503; Parks. vs. Boston, 15 Pick., (Mass.) 198, 199, 209.

a Chamberlin ze. Brown, 2 Doug., (Mich.) 120; Toledo etc. R. Co. ve. Dunlap, 47 Mich., 456, 466.

that in most respects the law is certain. I necessarily differ from his conclusion with great hesitancy, and with distrust in the soundness of my own, but my studies in the law have led me toward the opposite conclusion.

A law writer of reputation, in conversation with me the other day, expressed the conviction that our American law is daily growing more uncertain. What certainty is there in judicial administration, when in the last twenty-five volumes of Missouri Reports, out of 442 criminal cases which were decided on appeal, there were 200 reversals; out of 2,439 civil cases which were so decided, there were 1,052 reversals and 1,387 affirmances? In the same number of volumes of the latest reports in Georgia, out of 452 criminal case which were decided on appeal, there were 187 reversals and 265 affirmances; while in the same volumes, out of a total of 4.433 civil cases. 1.535 were reversed and 2.898 affirmed.

What is the effect of this state of things upon society? Three or four years ago an industrious statistician, by examining the files of the leading daily papers and getting the records of the executions and of the lynchings, discovered that the number of miserable persons lynched by mobs on accusations of crime, outnumber those who are executed at the hands of the law. Such a state of affairs exists in no civilized country in Europe, probably in no civilized country in the world. In my State, a few vears ago, an infamous wretch murdered the wife of his employer and benefactor and the unborn child in her womb, because she refused to leave her husband and live in adultery with him. The crime was admitted, and only the defense of insanity was introduced. There never was a particle of doubt as to his guilt. For some seven years he occupied quarters in the St. Louis iail, and there became the leader and adviser of the incarcerated criminals. He obtained some of the money which feed his counsel by obtaining goods under false pretences, by means of forgery and the aid of an outside confederate. He mutilated, and got away with depositions that had been taken in his case, and which did not prove as favorable to him as he anticipated; and I am informed on good authority that he even seduced, while in jail, one of the religious women who visited that place peddling tracts and saving prayers to the prisoners. He had three trials, four appeals. and one writ of error to the Supreme Court of the United States on the usual Federal question. That great court, by a majority of

aMr. John D. Lawson.

five to four, reversed the decision of the Supreme Court of Missouri, reversing at the same time an intermediate appellate court and the trial court, and rendering a decision which actually presented the spectacle of five judges overruling thirteen, upon a question which all of them had considered. The result was that this scoundrel, after putting the State of Missouri to untold expense, received the rites of the church, and died outside of the jail like a decent Christian.

To come to a more recent instance, you have not yet forgotten how, on Easter morning, 1885, while the church-bells were chiming the anthem of the Risen Lord, a profligate English traveler in the Southern Hotel at St. Louis, murdered his fellow-traveler with chloroform, concealed the body in a trunk with a placard on the breast, "so perish all traitors to the great cause," possessed himself of his money and valuables, and decamped to New Zealand: whence, after an expensive extradition proceeding, he was brought back, tried, convicted, enjoyed his appeal and his usual writ of error to the Supreme Court of the United States, and now, after more than three years, is about to expiate on the gallows a crime which in his own country he would have expiated in three months. The case ran the greatest risk of reversal. In the Supreme Court of Missouri one judge dissented. The prosecution took such a course that public opinion in Missouri is divided as to whether the criminal ought to be executed or not, although no intelligent person has a particle of doubt as to his guilt. has been so great that all benefit of public example is lost. man becomes a martyr and a species of hero. The public opinion which clamored and howled for his punishment when the crime was fresh, and which, in one of the rural districts, would have lynched him, is now turned to maudlin drivel, and has whined and entreated for his pardon or commutation. Under our procedure, notwithstanding the energy and ability of the prosecuting counsel and of the trial judge. I assert with confidence that his execution has been a matter of sheer luck.

In these two notorious cases—and I could cite many others in my State—the spectacle has been presented of the prisoner being tried first, the jury next, and the judge afterwards. With these examples, which I apprehend could be duplicated by others from most of the States, it seems to me a great misconception to say that the law is in a satisfactory state of certainty.

The eminent jurist who preceded me. Hon. Thomas M. Cooley,

of Michigan—for whom I have the greatest respect—one who is as profoundly versed in the state of our law as was Lord Coke in the law of England of his time.—saw a satisfactory state of certainty in the law touching the domestic relations. But not many vears ago an appellate decision was rendered in my State which. if not seasonably overruled, would have overturned the validity of numerous divorces, rendered bigamous numerous subsequent marriages, and bastardized an untold number of children. The spectacle is not unfrequently presented of a marriage being good in one State and null in another; and in a modern case in Massachusetts, in a case which I cannot at this moment cite, a man was convicted and sent to the penitentiary for bigamy, who proved a divorce from his former wife by a judicial record of a court of competent jurisdiction in California. Nay, in England, where it should seem the law upon this subject ought to be fairly certain, it is not yet settled whether a marriage by a sham clergyman. tne parties believing him to be a real clergyman, is a valid marriage or not.b

Is there any title, I ask, in our case-made law, where even the leading principles are securely settled? Take the subject of implied promises, which is one of the earliest conceptions of the common law, taking us back into the period of fiction. This branch of the law ought, it should seem, to be thoroughly settled. But I affirm, after much examination of the subject, that it is not even settled that a promise will not be implied contrary to the real understanding of the parties. In many jurisdictions recoveries are allowed on an implied assumpsit where there has been a contract to build a house, drawn up and signed by the parties with the most minute attention to every detail, which contract has been so essentially broken by the builder that he will not even venture to ground an action thereon. Again, take the general proposition that a request is necessary to raise an implied promise. This is reiterated in many legal judgments.º But it is easily shown that in many cases the law will imply a promise where there has been no request; but in what cases it will imply it, and in what not,

a Pate vs. Pate, 6 Mo. App. 49 (overruled in Wertz vs. Wertz, 11 Mo. App. 26.)

b See the article from the Law Times (London), reprinted in the American Law Review for July-August 1888.

c See cases collected in 2 Thomp. Tr. p. 898, note 2.

d That this rule is not of universal application is shown by decisions which hold that under certain circumstances the request itself will be implied. See, for instance, Fairchild vs. Bell, 2 Brev. S. C. 129; S. C. 27 Am. Dec. 702.

every title of our case-made law. In view of these facts, how can we congratulate ourselves that our law is in a satisfactory state of certainty? In indulging in such congratulations, do we not rather present the expressive figure appealed to by Chief-Baron Fitzroy Kelley, when he said: "We are all dancing in a net?" We are literally walking on water. Whatever we tread upon yields beneath our tread.

"Still we lean,
On things which rot beneath our weight, and wear
Our strength away in wrestling with the air."

"Pronounce what sea, what shore is this." Affirm with confidence, if you can, what the law of your case is, until it is decided in the court of last resort.

But if the law were measurably settled, the wide gap between law and morals would still be a subject of distressing solicitude. The law does not even profess to be coincident with sound morals. I do not refer to those minor morals which may give rise to fair differences of opinion, which belong rather to the domain of taste and fashion, about which it may be said, de gustibus non disputandum. I refer to those principles in the moral government of the world, about which all enlightened communities, at least all Christian communities, are agreed. To come back to the great title of implied contracts, if there is anything in that department of the law which may seem to be established, a proposition which is challenged by but two or three reported cases since the Yearbooks, it is that a moral obligation will not support an implied promise. The most distressing examples of this may be given, examples which, I say with firmness, are disgraceful to the jurisprudence of any civilized race. For instance, an adult son is under the strongest moral obligation to support his infirm and indigent parents; but the law, outside of the statute law, does not make this a legal obligation; and, therefore, debts contracted by an aged and indigent father or mother to ward off starvation, disease, or the most extreme suffering, can not be charged upon the wealthy son, or upon his estate. Nor will such a moral obligation even support his express promise, made after the fact, to liquidate such an indebtedness. If he gives his promissory note for it, he may defeat a recovery upon it under a plea of want of

e Edwards pe. Davis, 16 Johns, (N. Y.) 281.

consideration.' Neither is a father under any legal obligation to support his indigent child; and if the latter fall sick among strangers and is cared for by them, like a good Samaritan, the father may even repudiate his subsequent promise to pay them, —such is the barbarism of the common law.

But if the law were certain and at the same time just, it would be the acme of perfection. But where the law is certain and at the same time unjust, what can be more intolerable? There are rules of the law, which are administered by judges with dogged firmness and with stolid indifference to justice, the results of which are uniformly unjust. Of these I will cite an example in the jurisprudence of my own State. It was there decided that, where a man proceeding against another by attachment and garnishment. abuses legal process and collects a debt as being due from the garnishee to the attachment debtor, which is not due to him but to another, as where the debt is evidenced by a promissory note and it has been assigned,—the man whose debt has thus been impounded by law and converted to the use of a stranger, in a proceeding to which he was not a party, has no action to recover it against the stranger: h but the assignee can nevertheless recover against the garnishee, thus compelling him to pay the debt twice. The judge who rendered this decision, was accounted an able lawver—one of the ablest that we have ever had in Missouri. In all private matters he was strictly honorable and just. As a lawyer, in rendering this decision, he was absolutely indifferent to justice. He could have rendered a just decision on grounds more plausible, proceeding by merely technical reasoning, than those on which he placed his unjust decision. He placed it on the ground that the judgment impounding the fund was an estuppel. It was absolutely conclusive that the fund was correctly disposed of. But an estoppel in favor of whom? An estoppel in favor of the thief.—when he could with better reason have made it an estoppel in favor of his victim. On the same principle if A. brings replevin against B. for my horse and recovers, that makes my horse the horse of A., although I was not a party to the suit. That law has been followed in my State ever since, to

f Cook ve. Bradley, 7 Conp. 57; S. C., 18 Am. Dec. 79.

g Mills ve. Wyman, 3 Pick. (Mass.) 207.

h Funhouser vs. How, 24, Mo. 44 (Scott. J., dissenting); Dickey vs. Fox, Id. 917.

i Gates vs. Kerby, 13 Mo. 175; followed in Holland vs. Smith, 11 Mo. App. 6.

i Funhouser vs. How, supra.

the uniform doing of injustice. In the last case the spectacle was presented of two men of the same name, one of whom owed a debt to a merchant of St. Louis, who brought a proceeding by attachment in Illinois and garnished a merchant there. The merchant answered that he owed a debt to the man, not supposing that there was any difference of identity. Judgment was rendered against him as garnishee and the money paid over. Afterwards, the real creditor appeared upon the scene and brought an action against the merchant, who thus by an abuse of legal process had got his money, and failed. As frequently as this rule is applied in subsequent cases, just so frequently will injustice be done. It is simply a rule which legalizes and sanctions robbery under the plea of res adjudicata. Jurists of the learning and breadth of view of Chancellor Kent and Mr. Justice Washington, supposed that in such a juncture a legal judgment would be no estoppel against a person not a party thereto.1 But the fine sense of technicality which pervades the jurisprudence in my State has resulted in the rule which I have spoken of above.

What is the effect of this sort of justice upon the popular mind? What opinion has a garnishee of the law, who under it is compelled to pay a debt twice, being guilty of no fraud or negligence? What conception have the masses of the people of it, when it fails to punish crime and protect life and property with certainty? The plea which I wish to make is a plea for the introduction—I will not say restoration—of common sense and justice in the administration of the law. Lord Coke was persuaded that "Almighty God openeth and enlargeth the understanding of those who are desirous of justice and right."

But I trust that I shall not be thought guilty of the mean pessimism of unduly disparaging our Anglo-American law, or its administration. The English-speaking race possess five thousand volumes of legal judgments, reasoned out in most cases by benches of judges, after that solemn argument which Lord Coke pronounced so necessary in the administration of justice. These volumes extend from an early period of English jurisprudence to the present time. They cover every human interest; they decide

<sup>&</sup>amp; Green ve. Timmons, 28 Mo. App.

I Embree vs. Haunah, 5 Johns (N. Y.) 101; Mayer vs. Foulkroud, 4 Wash. C. C. (U. S.) 501; Compare Phillips vs. Hunter, 2 H. Bl. 402.

m Preface to 9 Rep. p. xiv.

m Preface to 9 Rep. xiv.

every variety of controversy that can arise in human affairs. They are not the expressions of benches of judges in one narrow island, but they embrace the highest results of the forensic reasoning of the greatest race of men that has ever lived in the tide of time. In the British Isles, in the wide expanse of the American Republic, in the wider expanse of the Dominion of Canada: in India. East and West: in Australia: in New Zealand: in South Africa—wherever the English-speaking race has established its supremacy (I had almost said, where had it not?)—its lawyers and judges have been engaged, by diligent study, by solemn argument, and by patient thought inspired with the love of justice, in formulating legal judgments upon controverted facts. and in supporting those judgments by the most massive reasoning. I vield to no man in admiration of them as a whole. a priceless legacy, the like of which is possessed by no other people Even Bentham, that frantic enemy of case-made law. acknowledged that it was a blessing, and of inestimable value to the legislator. If Trebonian and his associates had had such a treasury of reason from which to draw, what a code, what a digest they could have produced! Of these five thousand volumes of legal judgments, some thirty-five hundred have been delivered in the courts of our own Republic. Notwithstanding their crudities, notwithstanding their mistakes, notwithstanding even their occasional absurdities, they are the very originals of our law, which no student, no lawyer can safely ignore or put aside. I say with the greatest emphasis that our law can not be learned from textbooks, from digests, from statutes, or from all of these, though the study of these must not be neglected. That reason, which is the life of the law, can be fully discovered only in the judicial reports. The law can be learned in its proper and realistic form only by learning it in the very manner in which it is used, by learning it as it has been declared in vital controversies. I conceive that nothing would be more unfortunate than for us to make the mistake in the study of the law, which most of our institutions of learning have made in the study of language—the mistake of supplanting the study of the living and presently used system, by that of the disused and partly devitalized system of the past. Our colleges have largely substituted Greek and Latin for English, but we must not commit the corresponding folly of substituting the Roman law for the English law. The Roman law should be studied to aid and enlighten, as a means of comparison, perhaps

of amendment; but no thought should be entertained of studying it as a substitute for the study of our own system. And we should study our own law with reverent, but yet with critical, eyes. We should not forget that it is not all pure gold. We should remember that some of it is the hasty work of nici prius, and that much of it is the almost equally hasty work of tired appellate judges, in their vain endeavor to master over-crowded dockets. Above all, we should not forget that no inconsiderable portion of it is the work of judges who (even in the appellate courts) have learned their law after becoming judges and at the expense of litigants. We should remember that the power which has made, can unmake; that the process which has built up, can amend; and we should, therefore, be prepared to challenge its defects with the most unflinching firmness, remembering the remark of Dr. Johnson, "that no precedent can justify absurdity."

Above all, we should never lose sight of the primal idea that this vast collection of learning is valueless, and worse than valueless, except as a means of justice. I have met students of pathology who have unblushingly spoken about diagnosing a disease. and then killing the patient and holding an autopsy, for the purpose of proving the correctness of the diagnosis; and I confess that I never saw a greater exhibition of enthusiasm for science than that displayed by a young medical student, when describing the beautiful uremic kidney, twice the ordinary size, which he had found on an autopsy of a man who had died in a dark cell in a hospital, of an epileptic fit. I have frequently met lawyers who entertained a similar conception of their science; who would not tire of talking about a "pretty question," and who would "run it down." by a most thorough ransacking of the judicial reports. to some result or other, with the most utter indifference as to whether the result was or was not consonant with justice. I abominate such juristic conceptions; I have no patience with such lawyers. The greatest danger in our judicial system lies in the fact that our benches of judges are recruited from the bar, and that the bar in the pursuit of bread-winning (because this is the lot of our profession, as it is the lot of all other vocations) are, half the time, on the wrong side. Half the time, on the average. the copious learning and splendid powers of the lawyer have been enlisted in favor of injustice-pleading for, apologizing for and extenuating, wrong. The habit of dismissing from the mind conceptions of actual justice, while reasoning upon legal subjects.

has thus become inveterate. It is carried from the bar to the bench; and hence the spectacle of judges, who are high-minded and strictly honorable in all the walks of life, applying rules of law without the slightest hesitancy or compunction, where the result is the doing of the most flagrant injustice. I insist that such results are in most cases unnecessary. Outside the limited class of cases where a nisi prius judge is overborne by the force of the decisions of his judicial superiors, he can generally find in the five thousand volumes of judicial reports good legal reasons for the doing of justice. But it is a reproach to any civilized country that such reasons are necessary.

- 1. In conclusion, I wish to appeal first for a reformation of the jury system. No one, I suppose, thinks seriously of abolishing it, especially in criminal cases. I make no mention of minor re-I do not venture to suggest whether in certain cases majority verdicts might not be substituted for unanimous verdicts. But I appeal for the restoration of trial by jury as it existed at common law: for a restoration of the system under which the judge, in charging the jury, sums up the evidence and aids them with his trained opinion and experience as to the value of differferent elements of it: not hesitating, where he is not in doubt, to express his own opinion upon the weight of it; cautioning them. at the same time, that they are at liberty to exercise a judgment independent of his: subject, in case of error or partiality, to correction in a higher court, upon a bill of exceptions. This system exists in England, in all federal courts, and it has been retained in several of our State courts. It is conducive to greater certainty and justice than the system of hypothetical written instructions which obtains in other American jurisdictions. The jury would gladly have this aid from the judge; society is entitled to it; the innocent are entitled to it; and it ought not to be withheld. merely because, by withholding it, guilty persons may acquire additional chances of escape.
- 2. The whole system of legal presumptions, so far as they can be appealed to to control the judgment of the jurors on questions of fact, save those founded in public policy, and those which are necessary to fix the burden of proof, should be expunged from the law. They are an heretical brood, handed down to us from mediæval times, and have no proper place in a system of trial by jury. The truth should go to the jurors in its naked form, and not clothed and distorted with artificialities. They should resolve the question of truth or falsehood, of guilty or not

guilty, of belief or disbelief, according to their natural mental processes, not according to artificial rules which they do not understand, and which in a single trial they can not learn.

- 3. The privilege of concealing the truth is an abomination, and the vestiges of it which still linger in our law should be rooted up with an unsparing hand. Persons accused of crime should not be obliged, by any compulsory process, to testify as witnesses in the case. But a refusal to take the stand and explain inculpatory circumstances should be the subject of fair comment to the jury, both in the argument of counsel and in the charge of the judge, the same as in civil cases.
- 4. Above all, the conception should be restored to the law that it exists only for the purposes of justice. A judge should be a priest of justice. A court of justice should be a temple. Nor should justice be expelled from the appellate, any more than from the trial courts. Our legislatures again and again have passed statutes of jeofails, prohibiting the reversal of judgments for causes which do not affect the merits, and our courts have as steadily disregarded them, or followed them but partially. Even the popular opinion, as echoed by the press, is filled with the gross misconception that it is the right of accused persons to be tried with technical precision and formality. It is the right of an accused person to be acquitted if he is innocent, and convicted if he is guilty. Beyond this, all rights which relate to modes of procedure are not his rights, but the rights of society. These rights of society, society may waive, in proper cases, through its constituted judicial officers. No reversal should take place, even in a capital case, where the evidence is reported in full to the appellate court, as it should be in every case, unless the judges at least have a doubt, upon the evidence, whether the accused is guilty or innocent. things seem to me absolutely necessary to the dethronement of the mob and the reenthronement of the law. Moreover, there should be a restoration of common sense in the administration of justice. Common sense and common justice go hand in hand. They are nearly one and the same thing. That kind of law called "technicality," should be rooted up unsparingly, when it is contrary to common sense or common justice. The idea of justice should diffuse itself through all legal procedure, in all courts, at every stage of the proceeding from the beginning to the end.

"For justice" All place a temple, and all season, summer."

# APPENDIX No. 5.

### REPORT OF COMMITTEE ON LEGAL ETHICS.

Mr. Dessau, on behalf of the Committee on Professional Ethics, submitted the following report:

There are two sources from which the rules governing the ethics of the Legal Profession are mainly derived. The legislature has by positive enactment, and the courts have frequently by their decisions, laid down rules of conduct for lawvers in the practice of their profession. But these rules are not, and cannot be made, comprehensive enough to adjust many difficulties that daily are suggested to members of the bar. And for the source of that other and higher branch of legal ethics, its lex non scripta, we must look to those writers who have occasionally made suggestions on this line, and to those eminent lawyers who, by their example, have given to their profession those precedents of honor and love for the advancement of the Bar, which we should follow with strictness and without exception. This branch of legal ethics has not the binding force of law. But if we are to practice law solely by the established rules of law, our profession must lose much of its dignity, much of its advancement, and by far the greater part of that moral force so necessary to maintain its high position in the affairs of life.

Your committee does not consider it within the scope of their appointment to lay down any rules, or even to suggest any. It is hoped, however, that the Association will appoint a committee who shall be charged with the duty of preparing a comprehensive set of rules governing the ethics of the bar, to be submitted to the next annual meeting. The adoption of such rules will prove of great value to the profession; and it may not be amiss to state that the bar associations of some States, notably Alabama, have a code of ethics.

It has given your committee much concern whether they would not close their report with the suggestion just made. But to bring the matter of legal ethics more prominently before the Association, your committee will call attention to some infractions of these rules of ethics which may be fairly considered as appropriate to their functions.

A general notice, publicly given, that a person has been admitted to the bar, or has changed his place of business or place of residence, has always been considered admissible. But it occurs to your committee that the special solicitation of particular individuals to secure clients ought to be avoided. A lawyer ought not to advertise that he is especially suited to conduct a certain class of cases, as a merchant advertises that he can sell a certain line of goods cheaper than his competitors. The reputation and fitness of the lawyer should proceed from the court, and not from the notices inspired by him in the newspapers.

Akin to this violation of legal ethics are those indirect advertisements for business which are accomplished in a variety of methods. One is to procure local notices of causes pending, in which the importance of the case, or the responsibility of counsel, is emphasized. Such a practice tends to destroy the dignity of the profession and to degrade it. Another method is to obtain the report of a cause in such a manner as to magnify the ability of a lawyer conducting a certain side. The disposition of securing these notices with the hope of bringing in business is prejudicial not only to the profession, but also to litigants. No true lawyer should care for any report of his case except the official report made up from the record.

Your committee regret that they feel called upon to mention another gross breach of professional ethics in the direct solicitation of business, especially noticeable in damage suits. It would seem that the professional instincts of a lawyer ought to render it unnecessary for this committee, or this Association, to have to stigmatize such conduct as reprehensible to the last degree. That it has become necessary, which we presume will not be denied, renders it all the more urgent and important that vigorous steps be taken by this Association to correct it, either by enlightening the ignorant or punishing the vicious.

Your committee will call attention to another matter which ought to be considered as one of serious violations of the ethics of the profession. Lawyers are frequently employed to appear before committees of the legislature, either to advocate or to oppose pending legislation, particularly that legislation pertaining to cor-

porations. Such a practice is not only lucrative, but honorable and professional from every standpoint.

But the lawyer must be careful to confine his advocacy to the meetings of the committees called for the purpose of hearing argument. He is not any more at liberty to approach a committeeman privately, than he is to argue his cause with the judge outside of the court. So long as he is feed coursel, or with the hope of a fee, either directly or indirectly, he should refrain from presenting his cause, in any other way than in "open court." To indulge in the practice of influencing legislation by private argument or appeal, for a valuable consideration, is dangerous to the honor of the profession, and is calculated to hinder the just advancement of the influence of the bar.

Another violation of ethics, and one which should be avoided, is to discuss with the court, a cause pending and which is not yet decided, in which the lawyer is of counsel for either side. There should be no discussion, except by argument or brief, to which the opposite counsel should have full opportunity for reply. Opposite counsel can not reply to an argument he has never heard, or had an opportunity of hearing. The violation of this principle of legal ethics has evoked a rule of the Supreme Court, wise and beneficent.

Your committee hope that the legislation proposed by the Association, amending the law regulating admission to the bar, if adopted, will result in great benefit to the profession, considered from an ethical point of view. The fierce struggle for success sometimes blunts the sensibilities; but if the lawyer is saturated with the spirit of his profession, and does not regard it simply as a money-making business, he will never in his practice do anything which can be regarded as detrimental to the learning or the virtue of the law.

There is no calling in life which carries with it so many complicated relations as that of the practice of law. The lawyer owes duties to his client, to the court and its officers, to the other members of his profession, and to the public. How careful, then, must he be at every step, to follow closely those men, eminent alike for their genius as well as professional ability, and who in the practice of the law were as zealous in maintaining its honor and dignity, as they were in defending the rights of their clients. The united efforts of this Association, if directed towards the maintenance of a proper system of legal ethics, will prove of incalcula-

ble benefit not only to its members, but also to the profession at large, and if this Association fails to adopt and observe a high standard of professional ethics, it will fall far short of its mission. The inroads upon the profession from every quarter, are like the landing of pauper criminals from foreign countries upon our shores. Every profession advances in influence and dignity but that of the bar. And the efforts made by the bar, handicapped as it is, to keep pace and abreast with the giant strides of our high-pressure civilization, force its followers to employ other methods than those which they should legitimately claim as their own. Let ours be the high emprise to throw about the practice of the law those safeguards which will protect it from assaults, both without and within its sacred portals, and to clothe it with that dignity and honor to which it has a prescriptive right as ancient as virtue itself.

Washington Dessau, Chairman, Alex. W. Smith, J. A. Billups, John Milledge.

Mr. Julius L. Brown submitted the following:

I cordially approve of all of this report, except such as refers to conduct of attorneys in matters before the legislature. I do not think that such matters come properly before this committee. The cases are not similar. The courts decide what the law is The legislature what it is to be. In the one case the matter is finally settled, while in the other case, that of the legislative committee, their action is not final, but is subject to further consideration of the whole legislature. If the report is adopted and made law, no attorney can be heard except before the committee of the legislature. In matters before the legislature I believe that the attornevs relative to the matter should be fully known, and that he should not do any act not recognized by honest and honorable men as strictly proper. I believe that the act of 1879, founded upon the reasons given by the Supreme Court of the United States. fully covers the case. JULIUS L. BROWN.

## APPENDIX No. 6.

#### THE FUNNY SIDE OF THE LAW.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION.

#### BY WALTER GREGORY.

AT ITS ANNUAL MEETING, AUGUST 8, 1888, IN ATLANTA, GEORGIA.

Many people think there is no fun about law. That depends upon what they mean. There is no fun about transgressing law of any kind—natural, moral or statutory. But those who violate law are the only ones who need ever fear it. We, who practice it, may enjoy it. Having chosen it as our work of life, I see no reason why we may not make the most and the best of it. Why we may not have a keen relish for all that is humorous and ridiculous about it. It will lighten our labor, lengthen our lives, and make us stronger and better lawyers.

We are creatures of habit, and it is just as easy to cultivate the humorous habit, as the drinking habit or the smoking habit; just as easy to cultivate the smiling habit, as the snarling habit,; just as easy to cultivate the joking habit, as the growling habit. It is just as easy to say to a bill collector—"My friend, come next month, and I will tell you when to call again"—as it is to say—"Get out of here; don't bother me." It makes him feel so much better.

Like Dr. Talmage, I say—"The man that makes me laugh is my benefactor. God bless all those who mirthfully surprise us. They slay follies and absurdities, which all the sermons of all the pulpits cannot reach."

The first time it occured to me, there might be a grim humor about the law, was in reading Blackstone. When I saw that head-line, "Infants, Idiots, Lunatics and Married Women," it amused me to think what would become of Sir William, if the married women

of to-day could punish him for classing them with "infants, idiots and lunatics." It may have been all right in his day, but in these days they have much strength of mind, indomitable will, and great command of language. We read in the old books, "The law affirmeth plainly, that if a man beat an outlaw, a pagan, his villain, or his wife, it is dispunishable, because these persons can have no action." But if a man thinks they can have no action, in these degenerate days, let him try it on his wife. He will discover that it is all action. Husband and wife are one, like a case I heard of the other day. Satan had a fi. fa., and the bailiff, Death, was about to execute it. The triumphant wife said, "The doctor says you will be in hell in ten minutes." "Well," he said, "it is none of your business; go away, and let me start in peace."

But seriously, for it is a serious matter, the women have the floor; and I have heard that they have the last word.

Instead of a man owning his wife, as in those glorious old days, she usually owns him, and all he is supposed to own by his credulous creditors.

And this fact suggests a piece of much-needed legislation. Before a man makes a voluntary conveyance to his wife or children, or in trust for them, he should be required to proceed, as in the application for exemption of personalty and setting apart of homestead. Constructive notice that he has done it is not sufficient. He should be forced to give actual notice of his intention. It should then be judicially ascertained whether he has a right to be generous; whether he has anything that does not belong to his creditors. And the creditors should be required to then speak, or forever thereafter to hold their peace. Not wait till he was dead, and then attack the conveyance when the widow and orphans could make no proof. Such an act of legislation would put an end to thousands of voluntary conveyances, and the only objection I see to it is that it would also put an end to much litigation.

Leaving this suggestion for what it is worth, if you wish to smile whenever you hear a judge go over and over the same thing, every time he charges a jury, just recall this reported case in Arkansas. The suit was brought by Smith against Jones, upon a promissory note, given for a horse. Jones' defense was a failure of consideration. He claimed that, at the time of the purchase, the hores had the glanders, of which it died, and that Smith knew it at the time he sold it. Smith replied, that the horse did not

have the glanders, but had the distemper, and that Jones knew it when he bought it. The judge charged the jury:

"Gentlemen of the Jury-Pay attention to the court. You have already made one mistrial of this case, because you did not pay attention to the charge of the court, and I don't want you to do it again. I intend to make it so clear to you this time, that you cannot possibly make a mistake. This suit is upon a note given for a horse. Now, I hope you understand that. If you find that, at the time of the sale. Smith had the glanders and Jones knew it. Jones cannot recover. That is very clear, gentlemen of the jury. But I will state it again. If you find that, at the time of the sale, Jones had the distemper, and Smith knew it, then Smith cannot recover. Now, that is very clear, gentlemen of the jury. But I will repeat it, so as to avoid all possibility of mistake. If you find that, at the time of the sale, Smith had the glanders and Jones knew it, and Jones had the distemper and Smith knew it. then neither Smith nor Jones can recover. Now, gentlemen, these propositions are exceedingly clear; retire and make up your verdict."

Since locating in Georgia, I have noticed one or two things that impress a stranger, and as naturally escape the notice of the na-To a layman, it would seem very funny that all the lawvers of Georgia are paying a yearly privilege tax that is unconstitutional, null and void. We raised the question in Tennessee, and our Supreme Court decided as follows: "This case involves the constitutional power of the legislature to impose a tax upon lawvers, for the privilege of practicing law. It is conceded that the constitution authorizes the legislature to tax privileges; and it is further conceded, that the practice of law is a privilege. But the question is, whether it is such a privilege as is subject to tax-The Supreme Court of the United States, Chief Justice Chase presiding, has decided, in 4th Wallace, page 378, that lawyers are as essential to the working of the courts, as clerks, sheriffs. marshals, and even the judges themselves. Lawyers are officers of the courts, and are necessary constituent parts thereof. It is difficult, therefore, to see how the legislature could impose a tax upon the office and right of the lawyer, without thereby involving the very existence of the judicial department. It must be borne in mind, that this is simply a question of power between co-ordinate and independent departments of the government. the power exists at all, it may be exercised at the discretion of the legislature. Hence, although the tax imposed by the present statute is not so severe and oppressive as to interfere with the courts, yet, if once the power be conceded, then it is conceded that the legislature possesses a power which may be exercised, even to the closing of the courts. Our conclusion is, that the act is clearly unconstitutional, null and void." So, gentlemen, we may get rid of our Georgia tax whenever we choose to do so.

Another anomalous thing, I notice, is one of the results of allowing lawyers to take contingent fees. I met a man in Atlanta the other day, who had been among certain lawyers getting offers from them for his damage suit against a railroad. This was quite a revelation to me, and the picture of a lot of lawyers bidding against each other for a damage suit, was ridiculous and disgusting.

In most of the States, contingent fees are prohibited. The case goes out of court, and the lawver is forever debarred from every court in the State. This is chiefly for the reason that the policy of the law is to discourage litigation, and put an end to it. But another reason now appears to me; that it is abused, and is danger-Georgia should fall into line with the other States. Until she does, there will be suits that are simply gambling speculations. Suits where the clients and the lawvers have everything to make and nothing to lose. These very contingent fees do more than anything else to create the impression that lawvers are robbers of the very people they are supposed to protect. When lawyers take such cases as these, do all the work, pay retainers to get them, and only gain one such case now and then, they are bound to take a big fee in the successful case. It is in that way they create the impression that they are sharks. Now the fact is, that lawvers who are worthy their calling are men of the highest type-socially, morally and intellectually. Like mothers-in-law, they do not all deserve the bad things that are said of them. The public should understand that we are not as big rascals as our clients are.

You may have heard the statement of the court stenographer that at the end of a day's work his hand felt like it had been dipped in concentrated lie. The public must not forget that the stenographer records nothing but the proof, and that our clients and their witnesses furnish the concentrated lie.

One of the ablest lawyers I ever knew told me that when a client asked him if he could gain his case, he invariably replied:

"My friend, your case will either gain or, lose itself. All that any lawyer can do is to present it. in its strongest legal aspect."

Gentlemen, we all understand that we practice a noble profession. The minister of the gospel cares for souls, the doctor for bodies, and the lawyer for homes, firesides and reputations. They are all honorable callings, but there are unworthy men in each profession. Men who, if they had been merchants, would have put sand in their sugar, beans in their coffee, and water in their whiskey.

Now pause, and take a look at your profession. See wherein it is going up, and wherein it is going down. There are hopeful signs, and discouraging signs.

In the life of a great lawyer, his biographer says: "His first fee was 150 gallons of whisky, which was then a necessary part of a lawyer's outfit." It is a good sign, that such is not the case now.

Another good sign now is, that the veterans treat the recruits with uniform kindness. Very few of them in our day, would do like the old grey-beard, who replied to the two-hour speech of the young lawyer, by saying: "Gentlemen of the jury, I shall follow the example of my young friend, and submit this case to you without argument." A veteran of to-day would not have said that. He might have thought of it. He might have appreciated its destructive force. He might have realized that it was fully deserved, but he would not have said it, because he would have thought of the pain it would give. And it is right that they should be considerate; for many a young man finds it like the road to salvation. Among the unfavorable indications, notice the great accumulation of books. Our American reported cases are coming in at the rate of 16,000 a year, and text books in proportion. You may find decisions to sustain any side of any propo-The books are getting full of discordant and inharmonious law. No wonder people say, there is no telling what a jury or a woman will do. Another unfavorable indication, and a very serious one, is that our profession is degenerating into a trade. many Northern cities, that is all it is now.

Can we not impress upon the young lawyers of the South, that while it is a noble profession, it is a villainous and infamous trade. Let us appeal to them to preserve the ennobling traditions of the profession, and to appreciate our illustrious dead. May those ever dear and venerated shades be to them an aid and inspiration. Let them bear in mind that for generations the barristers at law

never considered taking pay of any sort. They practiced the profession because of its honor and dignity. They did not foresee the day, when a lot of lawyers would so crowd around a wounded man, that the surgeon could not get to him. Those lawyers who first received pay, were looked down upon with contempt, as unworthy their high calling.

My brethren, our years are passing rapidly, and are very eventful. The standard of our profession is going up, or going down. Soon we are to submit our own cases at the court of last resort. And those will be fortunate indeed, who can submit their cases on the record, without argument and without briefs. Many will need to file a plea, and ask the mercy of the court. Some will be barred by one statute and some by another—and the point I make is this—that the higher our professional standard here on earth, the better our chances in that supremest of all courts. The greatest lawyer at that court of infinite wisdom, is he who defended the weak, and was the advocate of the poor.

He is supposed to be our elder brother and our great exemplar; though this statement may be a surprise to some people, and may sound very funny to our clients.

Now, gentlemen, I shall hasten to a close. In my opinion, the unpardonable sin is for a man to talk too long, even when preaching a sermon or reading an essay to a bar association.

Now, here goes a simple truth, that may sound like a compliment, to-wit: The utmost that is needed in such an assembly as this is mere suggestion. This is an audience where a word is sufficient.

These reunions are pleasant and profitable. They are productive of thought and good fellowship.

I concluded that others might furnish the thought, and that I would contribute to the good fellowship.

It is here that we relate our experiences, and tell jokes on each other.

It was at such a reunion that Wade Hampton told this one on Zeb. Vance: Vance was listening to the Supreme Court decide the first case he had appealed. The court followed his argument and cited his authorities, almost word for word. Vance's face grew radiant, and he was shaking hands with the lawyers around him, when the court said: "For these reasons we affirm the decision of the court below."

Vance wilted-and we have all been in his fix. We have all

wilted. And many of us have had suits that resulted like the Dutchman's claim against the insurance company. Suits that were fair to look upon, but proved to be Dead Sea fruit. The Dutchman had been damaged about \$20.00, and the adjusters had called. He said, "I dont be so scared for one hun'red tollar. Put down one hun'red. Und my mudder-in-law faints; put down one hundred and fifty. Und my vife und childrens stays oop all nite; put down two hundred."

The adjusters told him the policy only covered actual damage, and he said: "Den I was von fool to had dot fire in mine house."

Sometimes we have thought, "I was von fool to have had dot lawsuit."

## APPENDIX No. 7.

#### OPEN QUESTIONS.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION,
By THOS. J. CHAPPELL.

AT ITS ANNUAL MEETING AUGUST 8, 1888, IN ATLANTA, GEORGIA.

In the practice of his profession, the attorney at law finds himself confronted with an interrogation point, with which he is at constant war and which he seeks, by professional tactics, to avoid or overcome. As counsellor at the inception of a transaction, his skill is devoted to the avoidance of the possibility of any question arising. As a counsellor, to test or pass upon a previous transaction, his professional scrutiny is exerted to detect and uncover any question that may lurk within its bowels. But it is in the controversies springing out of affairs between men, and brought for settlement through counsel to the courts, that the question of which we speak figures most conspicuously.

With reference to facts, the openness of questions is apparent only, and not real, for the facts that give answer pre-exist, if they can only be ascertained. This, it may be said, should be doubly true of law, in that it is prescribed; but this element in the definition of law, in the presence of continually springing open questions, assumes a merely theoretical significance.

The open question is the material that brings into request and into practice the profession of law, the science of which is the proper application of the law, which is general, to the case in hand, which is particular. Each case is particular or peculiar in that it differs in its incidents and surroundings, from other similar cases, the law of which has been determined by legislation or adjudication. It is this difference that opens the door to controversy, into which the attorney, being properly invited, enters and finds his mission.

The open question represents in law, what the principle of va-

riations or differentiations do in the doctrine of evolution; which is defined to be "the metamorphosis, by successive differentations of the homogeneous into the heterogeneous." It is, moreover, the outgrowth of this same principle in its operation on the affairs of men, and is an evidence of progress, development and prosperity. Laws are made and construed only with reference to existing order. The advancement of ideas, of trade, of the arts and sciences, and the infinite variety of human methods, vary the existing order, and subjects-matter, the same, become similar and, by successive variations, become different. The open question is then occasioned by a divergence from previous normal conditions. By this divergence the subject assumes new and peculiar features, on account of which it cannot always with absolute safety be referred for government to the rules "prescribed" in previous similar transactions.

In proportion as this divergence is great or small, is the degree of doubt as to the application of the rule, or as to the rule applicable. And in proportion to the increase of wealth and population, and social and commercial intercourse, and the development of the arts and sciences and their adaptation to the uses of man, will be the increase in multitude and variety of the elements that characterize and give individuality to transactions and occasion this divergence.

As Judge Cooley says in his work on Torts: "Every recognition by the law of a new right is likely to raise questions of its adjustment to, and harmony with, existing rights, previously enjoyed by others. . . Intellectual and material progress in various ways begets a complexity of business and social relations, and this adds perpetually to the difficulties of legal administration, and multiplies with no little rapidity, the occasions for an adjudication upon disputed or doubtful rights. And it renders necessary an infinity of legislation in order to adjust and harmonize the new conditions with what remains of the old."

The perennial crop of open questions, therefore, and the consequent increase of litigation and legislation, against which there is so much complaint, is not an unfavorable symptom as it is sometimes accounted, but, as is well recognized by the better informed, quite the contrary.

It is said for example of China, that until recently, since the Europeans have set in motion the wheels of progress there, the laws were so few and simple that there was scarcely a lawyer in the empire. The community that takes credit to itself of the fewness of its lawyers and the shortness of its courts, has as vain and questionable a boast as that of the congressman, some years ago, who, to commend himself for re-election, cited his constant attendance at the capitol, and his ever-presence at his post of duty, to which an impudent opposition paper replied, that "the same might be said of the statue of Liberty, perched on the capitol's dome." Tacitus, in his concise and epigrammatic style, says, "They made a solitude, and called it peace;" referring to the accounts rendered by the Roman Generals of the order and tranquility that prevailed over the scenes of their conquests. And to express the quintessence of barrenness, it is not unusual to say of a tract of land, that it is too poor to raise a disturbance on.

Dr. Sullivan, in his Dublin lectures on English law, speaks of the policy of Lycurgus, who, when he determined to admit no change or modification of his regulations in Sparta, wisely stopped the source from which new laws spring. Commerce and its instrument-money-were interdicted, and the people, by constantly living and eating in public, were not only accustomed, but necessitated, to content themselves with what simple nature required. while "Athens, on the contrary, the richest and most commercial city of Greece, abounded above all others in a multiplicity of laws. and those for causes already mentioned, perpetually varying and Rome, while it continued a mere military State, was contented with a few laws and those such as were short and plain. But, when by the conquest of Carthage, and of Greece, and of Asia. floods of wealth were poured into Italy, the necessary consequences soon followed, new laws were continually made, which being continually eluded, of course, gave birth to others."

It is in the nature of things that open, unsettled questions of law should exist; that they should increase in number and complexity and difficulty of solution, with the progress of time and the advancement of the human race, being a necessary attendant upon, and incident to, affairs. If it be an evil, it is a necessary evil, and more than compensates in the good from which it springs and of which it is the manifestation.

While it demands the corrective power of government, yet this governmental duty is fulfilled in keeping pace with questions as they arise, and working out their solution, checking the evil tendencies and giving scope to the good. To anticipate issues with the hope of preventing them, experience shows, only makes confusion

worse confounded; for it is the unexpected that always happens, and, when the question arises, it opens in a shape the least looked for.

Legislative efforts in this direction are sometimes prompted by supposed injustice in a particular case; and a statute is proposed covering not only the case in mind, but, of necessity being general in its operation, more than apt to affect unjustly an infinite number of possible and probable cases of similar character, that, under varying conditions, are liable to arise. Herbert Spencer, in his very technical language, refers to this species of legislation as resulting from a failure to look "beyond proximate causes and immediate effects, . . . whereas each phenomena is a link in an infinite series, is the result of myriads of preceding phenomena, and will have a share in producing myriads of succeeding ones. And, in disturbing any natural chain of sequences, not only is the result next in successioon modified, but also all future results in which this will enter as a part cause," whereby is produced, says he, "a complexity utterly beyond human grasp."

But even the wisest legislation cannot but be a prolific source of open questions, in that it declares what shall be the law, thereby dealing with a future pregnant with events and combinations and conflicts of interests and circumstances, utterly beyond the ken of man. It can forecast the law, but not the subject-matter of its operation, and contingencies, unforeseen and unprovided for, necessitate the exercise of the judicial functions of government.

It is to the court that the open question, in its practical shape, appeals for answer, and each question must be answered in the shape in which it presents itself. The infinite variation, to which reference has been made, gives special features to each individual case, hence the maxim, "Nullum simile in quartuor pedibus currit." And exceptions are rare where the case in hand may be said to be on "all fours" with the case in point; and even in analagous cases judicial minds have been led to different conclusions, so that precedent may be set against precedent, and the interrogation point intercepts the result.

Grimke, in his work on the Nature and Tendency of Free Institutions, says: "The principles of jurisprudence, in almost every one of its departments, have been so extremely ramified by the multitude of similar, or very nearly similar, controversies, that the shades of difference between different precedents are often so minute as to hold the judgment in suspense, as to which should be

relied upon, and yet they may conduct to totally different conclusions in a given case. The consequence, that a very considerable proportion of cases that are actually decided might be determined either way, with a great show of reason and with a like reliance upon precedent in either case. It is a natural consequence of the nature of the science, which, having to deal with an infinity of detail, necessarily runs into an infinity of deductions and conclusions, which perpetually modify and cross each other."

This a more correct and philosophical, as it is certainly a more charitable view of an inevitable condition of affairs, than is sometimes taken, and, notably, by Mr. Senator Tracy, in Wright vs. Hart, 18 Wendell, wherein he says: "Lord Eldon wisely remarked. that, instead of struggling by little circumstances to take cases out of a general rule, it is more wholesome to struggle not to let little circumstances prevent the application of the general rule. But this principle, in modern times, has been so poorly maintained that \* \* \* the study of the profession is much more the study of the exceptions and evasions of a general principle. established by one reported case, which case is made the place of departure for ascertaining a new position in another: and this again in a third, and so on, until the original rule, the natural standard of the law, is obscured and utterly lost sight of \* \* The consequence to be feared," he goes on to say, "is that judicial reports, instead of being beacons and landmarks to guide the public into quiet havens of security and repose, may become false lights, to decoy into the whirls and shoals of litigation."

But that a long line of precedents, although they may occasionally conflict, is of inestimable service in guarding the current of decisions, is evidenced by the wide range and divergent courses to be observed when an entirely new subject is to be dealt with, when, without the "beacons and landmarks," each court, unaided by precedent, works out its own channel. By way of illustration, the subject of Homestead and Exemption, in the treatment of which our distinguished guest, from Missouri, has so admirably succeeded in bringing order out of chaos. But he prefaces his effort by the just criticism, that "with few exceptions, the courts have not been able to seize upon or keep hold of governing principles. The decisions, in many cases, amount to a conjectural feeling for the 'intention of the legislature' when questions arose, which legislative omniscience could not foresee, and where, consequently, the legislature had no intention. I may state," says he,

"with confidence, that in nearly every case when the silence of the statutes have left room for construction, the courts of different States have disagreed. Nothing is settled, except that homestead and exemption laws shall be construed liberally, so as to advance the intention of the legislature, and even this is denied in two or three States."

In connection with judicial decisions, or precedents, may be mentioned, as a fruitful source of open questions, what is known as obiter dictum, which is the subject of so much comment and criticism by both bench and bar. Its warping tendency upon the principles of law, and its gradual, if not summary opening of questions, is most happily illustrated by Judge Lumpkin, in Reed vs. Roberts, 26 Ga. 294, the question being what fulfills the statute of frauds, as to attesting a will in testator's presence. In the case the testator was in bed, unable to move. Across the head of the bed was stretched, curtain like, a heavy quilt. The attestation was eight feet back of this, out of testator's view. Held, insufficient. In referring to the authorities cited, Judge Lumpkin comments on the tendency of the courts to depart not only from the strict construction, but the obvious meaning of the statute. one of the early cases the attestation was in an adjoining room. where testator, from his bed, might have seen through a broken glass. This was properly held sufficient: but in enlarging on the subject the court, by way of illustration, say "so, if the testator should be in bed, and the curtain drawn." This Judge Lumpkin characterizes "a bald obiter dictum." In a subsequent case. similar as to facts, the above case and obiter dictum are cited, the court using the expression, "though the curtains of the bed are drawn close," the word "close" being super-added to the first dictum, and in this shape it has passed into the elementary books as a precedent. Judge Lumpkin says he has high authority for declaring that "three-fourths of all the law in force in Christendom, as can be demonstrated by reference to the English and American Reports, originated in the obiter dicta of courts and judges"

In view of the numerous and constantly operating causes, legitimate and otherwise, of open questions, the wonder is, not that there are so many, but that there are no more.

The word "open," by the way, does not at all imply "fully exposed to view," as many have learned to their sorrow. So there is not afforded the protection that exists against other weapons of offense and defense. The exposure frequently comes too late to

equally true; questions are not always open that at first blush may appear to be; and the occasion is rare, and the emergency great, that would justify an expression of individual opinion as to what questions were open.

By way of general illustration, reference may safely be made to, probably, the most important question in the administration of the law in Georgia, involving, as it does, the life and liberty of the citizen; that is, the respective provinces of the court and jury in criminal cases. Section 4646 of the Code of 1882, and the prior penal codes of Georgia declare that, in criminal cases, the jury shall be judges of the law, and fact, and shall in every case give a general verdict of "guilty," or "not guilty."

In 1848, in Holder vs. the State, 5 Ga. 441, the question was first before the Supreme Court, and received very tender handling. In Berry's case, 10 Ga. 511, we are met with a quære; Judge Lumpkin saying, it is an interesting inquiry, which for want of time, the court will reserve for future investigation.

In 16 Ga. 600, 17 Ib. 498, 18 Ib. 194, no positive stand is taken. But in 1857, McPherson vs. State, 22 Ga. 478, the court declares: "The jury, being judges of the law and the facts, are not bound to go by the charge, which the court makes as to what the law is, unless the charge truly states the law; and, whether the court does that or not, the jury have the right to decide."

This position is steadily maintained down to the case of Mc-Daniel, 30 Ga. 853 (1860), in which the court declares: "If the jury cannot conscientiously adopt the law as given them in charge by the court, it is not only their right, but their duty to render a verdict according to the opinion which they entertain of the law, and they should be so instructed by the court if requested to do so."

It would seem, then, that this important question opened in the 5th and 10th Ga., and left part ajar in the 16th, 17th and 18th, was closed in the 22d, and was made securely fast in the 30th, and intervening reports. We hear nothing more of it, except possibly in an incidental way during the troublous period of war and reconstruction.

It comes up next in 1870, in Brown vs. State, 40 Ga. 689, where it is held that the jury may not disregard the charge of the court. Again, in the case of Anderson, 42 Ga. 9, a charge is approved to the effect, that the jury are judges of the law, so as to enable them

to apply the law to the facts and bring in a general verdict, and that they must take the law as given them in charge by the court.

This latter view is sustained in 52 Ga., 290, 612; and in 53 Ga., 428.

Then came the Constitution of 1877, with the declaration that "the jury in all criminal cases shall be judges of the law and the facts;" art. 1, sec. 2. par. 1, Code, §5018.

It was thought by some, that this abrogated the latter day decisions and restored the ante-bellum construction. Not so, however. In 1880, Hill vs. the State, 64 Ga. 453. the court decides that the Constitution did not alter the law, but simply re-enacted the provisions of the code, and refuses to recede from its later rulings. This view is affirmed in 65 Ga., 621 and 66 Ga. 517, but in the latter case, Judge Crawford recognizes the question as one, the subject of much discussion, but now settles it as stated.

As to how far it is settled, see Ridenhour vs. the State, 75 Ga., 382, (1885) wherein two of the judges approve the ante-bellum rulings, and are only restrained from overruling the later decisions because a unanimous judgment is required for that purpose, and Chief Justice Jackson does not concur with them. The same position is taken in Danforth vs. the State, 75 Ga. 614. But in the Hunt case, July 12th, 1888, not fully reported, the later decisions are adhered to. The probable accession of two additional judges to the bench may cause further discussion of the subject.

An interesting subject that has agitated the English for a long time, is worthy of some attention in Georgia. May a man marry his deceased brother's widow? By §1700 of the code, he may, (if she is willing) and by §4533, he may be put in the penitentiary for so doing; it being within the prohibited Levitical degree. Lev. ch. xviii v. 16. Should he rely upon the conversation between Christ and the woman, as to marrying seven brothers in succession, it is at the risk of its being declared a mere obiter dictum.

In winding up a decedent's estate it is important to know the order of priority of debts. §2533 [7] of the code gives a degree of priority to debts, the amount of which was ascertained and acknowledged prior to decedent's death. In 1877, the legislature undertook to make it more certain by inserting the words "in writing," after the word "acknowledged." But the court raises a new question in McNulty vs. Pruden 62 Ga. 139, by barely inti-

mating, without deciding, that a private entry by deceased would be sufficient.

The constitutional restriction and directions, both as to the form and subject of legislation, has given rise to many interesting questions.

Art. 1, sec. 4, par. 1; Code, §5027: "No special law shall be enacted in any case, for which provision has been made by an existing general law."

In Dougherty Co. vs. Boyd, 71 Ga., 484, and Elliott vs. Gammon, 76 Ga., 766, held, there being a general law prescribing the manner in which a vote shall be taken on the subject of increasing the debt of a county, an election under a subsequent local law is invalid.

In 76 Ga., 826, Houston Co. vs. Killen. A special act was passed in regard to employment of convicts on public roads, conflicting with the general law on the subject; held to be void, and an employé under it could not recover from the county.

In Maxwell vs. Tumlin, and Pope vs. Jones, October Term, 1887, and Duff vs. Jones, February Term, 1888, it is held that provisions in city court acts, authorizing appeals by bill of exceptions to the Superior Court, are void, because the general law of certiorari applies.

In view of these recent decisions, it becomes a serious question as to how many other local acts may not fall within the same category.

From a casual glance through some of the more recent statute books, it would seem to be an open question with some as to what is a compliance with the constitutional provision, that an act must not contain matter different from what is expressed in its title. (Art. 3, sec. 7, par. 8, \$5067.)

Captions of carefully drawn acts, local especially, may be found in all degrees of prolixity and statement of detail, covering, some of them, half a page or more, while others, on similar subjects, suffice with a line or two. It has been, however, held, 71 Ga., 224, that the title need not contain a synopsis of the law, but only the law must contain nothing variant from the title. It is sufficient that the title should be descriptive of the general purpose of the act. Again, 72 Ga., 246, the objection must be serious, and the conflict with the Constitution unmistakable, before the judiciary should disregard a legislative enactment on this ground. The former rulings have been somewhat modified, but the court

admits that the matter is not at all times of easy solution, and no general rule can be prescribed for its determination.

The promptness with which is sought legislative confirmation of railroad charters obtained under the general law, is not attributable wholly to a desire for extra privileges (for these are often not requested), but partly also to guard against the bare possibility of the General Act of 1881, Code, §§1689 (a) etc, being declared unconstitutional, upon the question being squarely made. The only grounds, for even the most timid, to apprehend so remote a possibility, are to be found in the 74 Ga., in two cases. In Augusta vs. The Port Royal and Augusta Railroad, p. 658-661, in discussing rights claimed by existing roads under §1689 (j), Judge Blandford lets drop the expression: "We do not think that that act, if constitutional, applies to a case like the present one." He goes on to say it is unconstitutional so far as it may undertake to give additional powers to existing roads, because at variance with its title in that regard.

In Gunn vs. Central Railroad et al., one section of this act being under consideration (§1689 (o)), the head note 2 (c) makes the court say, "the constitutionality of the act is not decided." The context shows this has reference only to the section cited. But, however, railroad projectors are better satisfied after they have a legislative confirmation of their general charters.

But it is no part of this undertaking to indulge in the profitless, unending, and precarious task of listing open questions. Come they will, and come unbidden, and sufficient unto the day is the evil thereof. When they come, there is the attorney likewise. And the lawyer's occupation will not be gone until the human mind becomes stagnant, and people have lost their thrift.

## APPENDIX No. 8.

#### ON SEALED INSTRUMENTS.

READ BEFORE THE GEORGIA BAR ASSOCIATION,
By A. H. DAVIS.

AT ITS ANNUAL MEETING IN ATLANTA, GEORGIA, AUGUST 9, 1888.

"Sigillum est cera impressa"-3 Ooke's Institutes, 169.

When possible, it is very interesting to follow an old legal principle back to its beginning. The circumstances giving birth to a doctrine are often wrapped in obscurity; but the doctrine itself may have been found upon trial to possess a practical value, and so outlives the things that called it into being. Very often, however, we can see into the past with clearness enough to say, "these facts begot such and such a principle." And to us of the present day, it seems some legal doctrines have a remarkably queer parentage.

It is the purpose of this essay to briefly show the origin of the seal as a mode of attestation; how the great doctrines of the subject followed simply and logically out of a single idea; and particularly the past and present status of the seal in Georgia.

The seal certainly has great antiquity. Blackstone cites an instance of its use recorded by the prophet Jeremiah, and speaks also of its employment in the Roman law. And our own Judge Lumpkin found a still more ancient precedent in "Moses' Reports, Book of Genesis, c. 38, v. 18." But we are chiefly concerned to know that in the common law the seal was not of general use prior to the reign of William the Conqueror.

There was a time when we were a very ignorant folk. We could not even read or write. Before the Conquest the inability to write

a 2 Blackstone Com. 805.

b 13 Ga. 147.

one's name had been relieved by signing with a cross-mark, "which custom," says the great commentator, "our illiterate vulgar do for the most part to this day keep up." The Norman fashion of overcoming the same embarrassment was imported into England at the time of the Conquest, and consisted in making an impression, having, or supposed to have, a distinctive individuality, "on wax wafer or other tenacious material."

This, then, is the origin of the seal, to supplement the inability to write. Born of ignorance, it is no wonder that it was clothed in superstition. To the unlearned, there is a mystery in what they do not understand, that works the untrained imagination into a kind of awe, which we of superior education call superstition. At the time sealing first became fashionable in England. the learned class was very small, consisting almost entirely of the clergy. The scholar's sacred function, no doubt, assisted the ignorance of the laity in vesting the power to read and write with a superstitious respect. And this feeling was most probably encouraged and fostered by the learned themselves, as a convenient means of self-magnification. Thus, by a very natural process, the seal itself, being the only thing about an instrument that the ignorant could know or recognize, soon became the special mark and object of superstitious awe on the one hand, and of factitious importance on the other. To this origin in human simplicity and weakness can be traced the familiar doctrines concerning sealed instruments. Thus:

- (1) Sealing being looked upon as a very solemn and important act, the legal presumption arose that no man would affix his seal without inducement. Hence, where a contract is sealed, a valuable consideration is presumed from the mere presence of the seal.
- (2) So, likewise, it was not proper, or even competent, for one to impart authority to do such a solemn act as execute a sealed instrument, save with an equal solemnity. Hence the authority to execute a sealed instrument must be under seal.<sup>4</sup> The only qualification to this is in the case of the agent of a corporation, because the *first* person affixing the corporate seal must necessarily be without authority under that seal. Hence a vote of the directors or of the corporators is sufficient.<sup>6</sup>

d 6 M. & W. 215; Smith's Merc. Law, p. 149, and authorities there cited; 30 Ga., 280.
 e Angell & Ames on Corp. p. 193; 1 Minor's Inst. 615; Ga. Code of 1882, 22182.



el Greenleaf's Evid. 219; 2 Chitty's Blackstone, p. 465, note (36); 3 Minor's Insts. p. 136; 9 Ga. 54.

- . (3) Again, a sealed instrument could not be lightly set aside. Consequently, a release thereof must be under seal. For it would be absurd, nay, impossible to cancel a solemn act by a trivial one.
- (4) As a proof of the participation of the learned in maintaining doctrines that magnified their own accomplishments, we have the fact that a separate form of action, namely, that of covenant, was specially appropriated to sealed instruments. An action on a sealed contract, where the damages were unliquidated, had to be declared in covenant. To be sure, if it were a promise to pay money, the plaintiff might elect between covenant and debt. But covenant in many cases had special advantages to recommend it.
- (5) It is curious to note the effect of the seal in pleading and in evidence.
- (a) The fact of sealing had to be averred in pleading, because of the dignity the seal had acquired from the important doctrines which clustered around it.
- (b) The doctrine of profert is the direct outcome of the respect accorded the seal. If either party in his pleadings alleged the existence of a sealed instrument, defining the rights of the parties, he must offer to show it to the court, for the reason, among others, that the seal was of great moment.
- (c) So, too, the doctrine of estoppel. When a party had made a solemn declaration under seal, he was not permitted to deny or contradict it. A person might contradict a previous sworn statement at the risk of perjury, but he could by no means dispute what he had solemnly sanctioned by his seal. It is truly remarkable that the seal should be given more finality than the oath. And, although the doctrine of estoppel has grown wider and rests mainly upon principles of good faith and common sense, it was originally confined in its operation to sealed statements, and derived its prime force from the superstitious deference paid to the seal.



f Coke Litt. 222(b); 3 T. R. 590; 8 East 346, cited by Mr. Chitty in 2 Blackstone, Com. 465, note (36.)

g Chitty's Pleading, 134.

A In covenant recovery could be had upon a promise to do a collateral thing, as well as to pay money. 1 Chitty's Pleading, 134; 4 Minor's Inst. 400. Moreover in covenant the venue was transitory. 1 Ch. Pl. 240.

il Sand. 290, note 1, cited by Chitty, 2 Blackst. 305, note 14.

<sup>12</sup> Blacks. Com. 465, note 36, and authorities. 1 Ch. Pl. 351.

<sup>&</sup>amp; See authorities cited by Mr. Chitty, 2 Chitty's Blackst. 465, note 36; 53 Ga., 468.

l See Green! Ev. \$222, 23, 211.

- (6) Having become so firmly rooted in the law, and besides possessing intrinsic value as a mode of attestation or authentication, the seal has been treated with very distinguished consideration by the framers of the various statutes of limitation, both in England and the United States. Thus, the first general statute of limitations in England, that of 21 Jac. I., c. 16, imposes no limitation at all upon actions of covenant, or debt, on sealed instruments. And subsequent statutes in America have allowed a longer period within which to bring an action on a contract under seal, than on one not under seal. Thus, in Georgia, twenty years is the period of limitation prescribed for sealed instruments, while a comparatively short time, six or four years (as the case may be), is allowed for actions on other contracts.
- (7) Moreover, at common law, its solemnity enabled a specialty to bind the heir, when named."
- (8) And, lastly, may be mentioned the favor shown obligations in the payment of a decedent's debts. The specialty debt was regarded as of a higher nature than debts by simple contract, and so had to be paid in preference to them."

The seal having acquired so great importance, the inquiry, What is a seal? became necessarily significant and interesting. The common law maxim was: "Sigillum est cera impressa, and the definition was: "An impression on wax, wafer, or other tenacious material." It is only of late, comparatively, that the question arose whether an impression on the paper itself fulfils the idea of a seal. The older authorities held that it was not sufficient, but numerous later decisions, in this country and England, maintain that it is."

Another interesting question in this field is: "Does sealing include signing?" Blackstone says: "This neglect of signing and resting only upon the authenticity of seals remained long among us; for it was held in all our books that sealing alone was sufficient to authenticate a deed." But he goes on to say, the statute of Frauds expressly directs the signing in grants of lands and other species of deeds, "in which, therefore, signing seems to be now as necessary as sealing, though it hath been sometimes held that the one includes the other." P

p Ellis vs. Smith, 1 Ves. Jr. 13; 2 Blackst. 306, note (16).



m Code, 222915, 2917, 2918.

m 2 Chitty's Blackst. 465, note 36.

o See the numerous authorities cited in 2 Minor's Inst., 729; Ga. Code, 25.

Historically, the position that sealing includes signing is impregnable, inasmuch as sealing was originally the substitute of signing. But the later authorities are against such a conclusion.

It will be interesting now to note the disposition, past and present, of our legislature and Supreme Court toward this relic of antiquity. And in tracing the adventures of the seal in Georgia, we shall find that it has gone through dangerous and slippery places. It has not always been regarded with favor, but in common with most human inventions, has bad a career of ups and downs.

That the seal imports a consideration, was recognized and firmly upheld in the case of Rutherford vs. Executive Committee, etc. To the same effect is the language of the Code and of subsequent decisions. The presumption at common law was conclusive, so that a plea to a sealed instrument of want or of failure of consideration, was inadmissable. This was decided to be the law in Georgia in the case cited. In two subsequent decisions, the Supreme Court has established an exception in favor of sealed promissory notes, allowing a failure of consideration (total or partial) to be pleaded thereto. In the first of the cases, the question arose upon a note purporting to be under the hands and seals of both the makers, but which in fact was signed by only one. The court held, with considerable doubt, that a sealed promissory note s not a common law specialty, mainly because it lacks the essenial solemnity of delivery.

The definition of specialty in the Code plainly includes a sealed promissory note, and in a later case the Supreme Court has held such a note entitled to the twenty years' limitation of actions on specialties. After all, the court preferred to rest its



q 2 Blackst., 306. In Georgia a deed to lands must be signed, although it need not be staled.

r 9 Ga., 54.

<sup>•</sup> Code, 22739; 13 Ga. 502

Albertson vs. Halloway, 16 Ga., 377.

The learned judge who rendered the decision, did not explain why a promissory note is not delivered with as much solemnity as a specialty, since no more is required of the latter than simply being handed to the obligee. Delivery was anciently somewhat formal, but gradually became less and less so, until it is even presumed from slight indications. See 2 Chitty's Blackst., 307, note (17).

v 22717.

w 22915; 58 Ga. 236.

decision upon the irregularity in the execution of that particular instrument, x so that the case was of not much force as a precedent.

But the same question arose in a later case, and the doctrine of Albertson vs. Halloway, was taken to be that a total failure of consideration may be pleaded to a sealed promissory note. Then the statute of 1836, allowing a partial failure to be pleaded wherever a total failure could be, was invoked, and thus the conclusion come to, that to an action on a sealed note or single bill, the defendant may plead either a total or a partial failure of consideration. There may be, and probably is, more of modern justice in the seal's being merely presumptive or prima facie evidence of consideration, but it might be questioned whether the legislature was not anticipated.

In this connection may be noticed the case of Bruton vs. Wooten: "It seems that the seal does not necessarily import a consideration when such an instrument is relied on, by way of plea in Chancery. But whether this be so or not, where the instrument sets forth a consideration, the seal cannot import a consideration different from that which is expressed."

In reference to deeds, the presumption of consideration afforded by the seal does not preclude an inquiry into the consideration when the principles of justice require it. But only when the considerations of justice require it, will the consideration of a deed be scrutinized through extrinsic evidence.

The doctrine, that an authority to execute a sealed instrument must be under seal, has been somewhat modified. The Code says very plainly: "The act creating the agency must be executed with the same formality (and need have no more), as the law prescribes for the execution of the act for which the agency is created." And the doctrine has been affirmed, in several cases. In *Ingram* vs. Little, the first of our Supreme Court decisions on the point, the reason is very clearly stated, thus: "The rule, although a technical one, is single, clear, and easy of observance. If abro-

x In a case of this sort, many American authorities construe the one scroll as the seal of all the signers. 2 Minor's Inst., p. 730; 3 Monr. (Ky.), 377; 6 Barr. (Pa.), 302; 2 Dev. (N. C.), 493; Contra, 8 Gratt (Va.) 63

y Martin vs. Bartow Iron Works, 35 Ga., 320.

s So by statute in New York, 2 Rev. Stat., 406 277.

a 15 Ga. 570. See also Smith vs. Smith, 36 Ga. 190.

b Code §2690; 55 Ga. 78; 62 Ga. 609; 62 Ga. 742.

c Sewell ve. Holland, 61 Ga. 608

gated, the title to property might be left too much to the mistakes of memory, or to the corruption of humanity."

But an exception is allowed in favor of partners. So that, "although a partner cannot by virtue of the authority he derives from the relation of copartnership, bind his partner by deed, yet a prior authority, or a subsequent ratification, not under seal, whether express or implied, verbal or written, is sufficient to establish the deed as the deed of the firm." The reason given is, that great inconveniences would result to trade from a strict enforcement of the common-law rule. But the exception is not made with all the firmness that might be desired, since the decision is finally put upon another ground, a reason for which we shall see presently.

The legislature has qualified the doctrine in two important particulars, namely, as to the authority of partners and agents, respectively, in legal proceedings. The Act of 1838 provides that any partner may, in the prosecution of legal rights, execute a bond in the firm name. This was manifestly dictated by considerations of convenience. But the words of the act itself, and the adjudications, restrict its operation to legal proceedings. For the same reason of convenience it has been enacted that an agent, about legal proceedings, may bind his principal by bond, without sealed authority. In Gilmer vs. Allen, it was decided that there was, in 1850, no statute authorizing an agent to execute a forthcoming bond for property levied on by attachment. But soon afterward a statute was passed giving an agent such authority.

The distinctions between forms of actions being obliterated by the adoption of the Code pleading, no special form is appropriated to actions on sealed instruments.

The effect of the statute which requires a petitioner to set forth his charge, or demand, fully and distinctly, is equivalent to the common-law requirement, that a sealed instrument be pleaded.

d Per Nisbet, J. 14 Ga. 173; See also Rowe ve. Ware, 30 Ga. 278.

e See Smith's Merc. Law, p. 75, note, where the American authorities are reviewed.

<sup>/</sup>Per Lumpkin, J. in Drumright vs. Philpot, 16 Ga. 424.

g Cobb's Digest, p. 589; Code §1900.

A Dow, Wilson etc., vs. Smith & Co. 8 Ga 551.

i Act of 1784, Cobb, p. 721; Code §2207.

<sup>4 9</sup> Ga. 206.

k Acts of 1855-6, p. 33; Code §3322.

l Code, ₹3332.

The purposes of *profert* are substantially fulfilled in our practice by the attachment to the petition of a copy of the instrument, as an exhibit, and the production of the original in evidence.

The doctrine of estoppel is still alive among us; though courts generally are jealous of its extension, and recognize it only so far as they are compelled by force of precedent. Thus it is held in Georgia, that the maker of a deed cannot deny any of its material recitals.

The advantage of a sealed instrument, as regards the limitation of action on it, continues unabated.°

In the payment of a decedents' debts, in Georgia, specialty debts stand on the same footing with other liquidated demands.

There are special doctrines respecting sealed promissory notes and deeds to land that deserve separate notice.

By the act of 1799,<sup>q</sup> specialties are made negotiable like promissory notes. But only such as are for the payment of an ascertained sum of money, or of specific property.<sup>r</sup>

Notwithstanding this statute, the effect of a seal upon a promissory note has been the subject of grave judicial doubt. Thus, in Broughton vs. Badgett, which has especial interest by being the first adjudication of our Supreme Court touching a sealed instrument, Judge Nisbet gives utterance to a serious doubt, whether a sealed note can be transferred by an endorsement not under seal. The case, however, did not require a decision of that particular point. But the doubt has since been resolved by the cases of Porter vs. McCollum, and Milledge vs. Gardner. In the first of these it is laid down, that to seal a promissory note does not destroy its negotiability, because such was the usage of merchants in Georgia at that time. In the other it was held, that the unsealed endorsement of a sealed instrument is a contract under seal. The Code now expresses the same principles.

One of the most frequent employments of the seal at common law has been rendered unnecessary with us, by reason of sealing

m See 1 Greenl. Ev. 2205.

n Thrower ve. Wood, 53 Ga. 468.

o Code, 22915.

p Code, §2533. See also 5 Ga. 274; 14 Ga. 379; 15 Ga. 322.

q Cobb, p. 519.

<sup>+1</sup> Kelly, 76.

s 15 Ga. 528.

t 29 Ga. 700.

u Code, 22776.

having been dispensed with as requisite to a good deed to lands. The earliest deliverance of our legislature on the subject was in provincial times. The statute of 1768, bears on the face of it its passage in a time of frequent inconveniences resulting from irregularities in the form or execution of deeds. Section IV, provides substantially that no defect in the form or execution of a deed shall affect its validity. But being confined to deeds "heretofore made," the law was simply and expressly curative, and did not outline any policy as to future deeds.

The whole statute was originally limited in its duration. But if it received a new lease of life in the general revival of 1783. the effect was merely to extend the healing operation up to the time of the revival. Without an express change of policy, neither the original act nor its revival could be a panacea for the sickly deeds of all time to come. Accordingly the legislature of 1785. passed an act. \* the first section of which re-enacts the act of 1768, in almost the same terms. The "want of form" policy is again strictly limited to deeds made before the passage of the act. And in the second section the intention of maintaining the use of the seal is manifest. For it is provided that deeds of conveyance by way of bargain and sale, among other requirements, being "under hand and seal," shall be valid. That want of form, however, shall not vitiate a deed, has become the settled policy of the Georgia law. And, likewise, as regards sealing, it is omitted from the regital of the requisites of a deed to lands in the Codes of 1863. of 1873 and of 1882. But the seal is usual in practice because of those several advantages appertaining to sealed instruments which still survive.

Next comes the inquiry, What is a seal? Or more comprehensively, What has been and now is necessary in Georgia, to constitute a writing a sealed instrument?

Before legislation on the subject, the seal in Georgia was the same as the common law seal; an impression or wax wafer, or other tenacious substance. But the question had arisen at common law whether an impression on the paper itself was a good seal. Our law holds that it is, thus following the weight of late authorities.

v Cobb, p. 163.

w Cobb, p. 720.

<sup>2</sup> Cobb, p. 164.

y Code of 1863, 22648; Code of 1873 (and 1882) 22690.

s Code, 25.

The scroll, as a substitute for the seal, very early made its appearance in Georgia practice, and to still the conflict which arose about its efficacy, the act of 1838, was passed, declaring and establishing the sufficiency of the scroll, "or other representation of a seal." And, furthermore, whenever it should be shown by words expressed in the body or conclusion of the instrument, that it was the intention to execute a sealed instrument, though no scroll or seal had been annexed, it must be held to be a sealed instrument.

There have been several decisions in full accord with the terms and spirit of this act. Thus, where an instrument in the form of a bond was signed by the party executing it, and opposite his name was an ink scroll with the word "seal" written within it, it was held to be a sealed instrument, although there was no recital of the fact of sealing or acknowledgement of the scroll as a seal in the body of the instrument. So an instrument with a scroll annexed to the signature was a bond without purporting to be such on its face.

But the present law of Georgia is the diametrical opposite of For in the statute of limitations of 1856,4 the benefit of the twenty years is specially denied instruments which are thus sealed by sheer force of the statute of 1838, it being declared that, "no instrument shall be considered under seal, unless so recited in the body of the instrument." Although this provision might. by interpretation, have been confined to the question of limitation, the Supreme Court took a different view in Brooks vs. M. C. & J. F. Kiser. where it is laid down without reserve: "That the printed blank on which a promissory note was drawn, concluded with the words, 'witness our hand and seal,' did not alone make the note a sealed instrument. These words called attention to the attestation to be made, but did not supply the place of a seal or representation thereof after the signature." So "the attaching of a seal or scroll, after the signature to an instrument without some recital in the body thereof, will not make such instrument a writing under seal; and it would seem that a recital alone, without the attaching of a seal or scroll, will not make a sealed instrument."

a Cobb, p. 274.

b Williams ve. Greer, 12 Ga. 459.

e Harden vs. Webster, 29 Ga. 427.

d Acts 1855-6, p. 234; Code 22915.

e 69 Ga. 762, and authorities there cited.

The latter principle is confirmed in Wilhelms vs. Partoine. So that at the present day an instrument to be sealed must not only have the seal or scroll affixed, but must also contain a recital of the fact of sealing.

Several questions have arisen about the scroll, or scrawl. Whether the privilege of scrawling is tendered to corporations, as well as natural persons, is no longer a question with us. For it is distinctly held, in Georgia, that a scroll may be the seal of a corporation.

In regard to official seals, they cannot be by scroll. The seal of a notary is, by the Code of 1863, expressly prohibited from being by scrawl. While speaking of official seals, it is proper to mention the statute which requires every officer, "whose certificate of records or other papers are admissible in evidence in any court in the State," to have and keep an official seal.

The long-cherished great seal of the State is fully described and fortified by the Code and Constitution.

Finally may be mentioned two decisions in reference to the omission of the seal, one for the sake of the principle laid down, the other chiefly for the notable debate which occupies its pages. The first has a sort of prominence by being, perhaps, the latest decision of our Supreme Court about a sealed instrument. The omission of a seal, or scroll by way of seal, when a mutual mistake as to the legal effect of an instrument, is one of those mistakes which are relievable in equity.

The case of Lowe vs. Morris<sup>m</sup> is one of unusual interest, because it contains the best exposition of the conflict, which has long raged in our practice and legislation, between the advocates of the seal and its enemies. The principle there laid down is, that "a writ of error, without a seal, may be amended by attaching a seal thereto." But far surpassing the importance of this decision is the discussion it occasioned. The three judges delivered opinions seriatim. Warner, J., had nothing to say of the seal, simply hold-

f 72 Ga. 898.

g Johnston vs. Crowley, 25 Ga. 316.

<sup>&</sup>amp; Code, 25.

i Code, §1503.

f Acts 1851-2, p 77; Code, §132

<sup>&</sup>amp; Code, 2285, 86; Constitution of 1877, Art. V, 2III.

l'Allen oc. Elder & Son. 76 Ga. 674.

m 13 Ga. 147.

ing that the error was within the statute of amendments. next in order is the opinion of Lumpkin J. In a brilliant passion of rhetoric and ridicule. he showers a perfect storm of contempt upon the seal. So keen is his satire, and so uncompromising his scorn of effete technicalities, that it is well nigh impossible to read and not be convinced. Allow me to quote a few brief extracts from the opinion. First, he thinks the seal has outlived its day of usefulness: "The truth is," he says, "that this whole subject, like many others, is founded on the usage of the times, and of the A scroll is just as good as an impression on wax, wafer or parchment, by metal, engraved with the arms of a prince. potentate, or private person. Both are now utterly worthless, and the only wonder is that all technical distinctions growing out of the use of seals, such as the statute of limitations, plea to the consideration, etc., are not at once universally abolished. The only reason ever urged at this day, why a seal should give greater evidence and dignity to writing is that it evidences greater deliberation. and, therefore, should impart greater solemnity to instruments. Practically, we know that the art of printing has done away with this argument. For not only are all official, and most individual deeds, with the seals appended, printed previously, and filled up at the time of their execution, but even merchants and business men are adopting the same practice, as it respects their notes. Once the seal was everything, and the signature was nothing. Now the very reverse is true, the signature is everything, and the seal nothing. Thanks to the advancing intelligence of the age! \* \* \* So long as seals distinguished identity there was propriety in preserving them."

"For myself, I am free to confess that I despise all forms having no sense or substance in them. And I can scarcely suppress a smile, I will not say 'grimace irresistible,' when I see so much importance attached to such trifles. I would cast away at once and forever all law not founded in some reason—natural, moral, or political. I scorn to be a 'cerf adscript' to things obsolete, or thoroughly deserving to be so."

He thinks the ancient doctrines, concerning sealed instruments, unworthy of an age of progress: "And vet we, who are 'making lightning run messages, chemistry polish boots, and steam deliver parcels and packages,' are forever going back to the good old days of witchcraft and astrology, to discover precedents for regulating the proceedings of courts, for upholding seals and the tremendous

dectrines consequent upon the distinction between sealed and unsealed papers, when seals de facto no longer exist! Let the judicial and legislative axe be laid to the root of the tree; cut it down; why cumbereth it any longer courts and contracts?"

But he is answered by an antagonist well worthy of his steel. In dissenting from the opinions of the other members of the court. Nisbet, J. says, in regard to the seal's being unworthy of the time: "If it has outlived the age and the condition of things in which it originated, and the retention of it is therefore unworthy an age of progress and the light of a new order of things, the reproach of dishonoring this brilliant era belongs to the legislature." And further on he defends the seal in reasoning that is singularly forcible and elegant. "Nor is the seal," says he, "so unmeaning a relic of barbarism as, at first view, it might seem to be. The administration of the common law depends, in innumerable instances upon forms, in themselves, it may be, unmeaning or even ridiculous; but consecrated by time and usage, they have become substance, and rights are as effectually guarded by them as if, in themselves, they were ever so significant. Those forms are as obnoxious to criticism as the seal. So permanently fixed is the seal in the laws and jurisprudence of this country, that it cannot be removed without unsettling several of the most important titles of the science. It may be, if you please, an unsightly excrescence, but apply to it the knife, and the life of the patient is endangered. Even in this age, whose vocation seems to be to reform everything from the religion of Heaven down through a descending series almost jufinite, to a certifrari, the seal of my Lord Coke retains a place of commanding power in the law which governs individuals and empires. It governs titles to lands: it determines the gradation of debts in the settlement of insolvent estates; it rules the application of the statute of limitations, and controls, to some extent, the action of corporations, and it verifies judicial records. The Great Seal in England gives validity grants and letters patent from the crown, and its withdrawal or delivery creates or uncreates the chancellor. When nations contract upon equal terms, their seal solemnizes and verifies the consummation. We, too, have our Great Seal, subserving many purposes of State sovereignty and domestic administration, guarded with jealous care, and delivered with ceremonial pomp to each elected chief magistrate in the presence of the representatives of the people. It is too late in the day to undertake to lessen the

dignity or undervalue the uses of seals. The policy of applying a seal to a judicial writ is to give ceremony and solemnity to its issue; to draw and fix attention to it, and effectually to prevent fraudulent uses of it. Such policy commends itself to the reason and good sense of every man."

The effects of this great doctrinal duel can be traced in subsequent decisions, and have left a lasting impress on the legislation of the subject. The champions seem to have parted on a rock that shelved two ways, wedging them further and further apart. When similar questions arose before the same judges, the unanimity of the court had to be purchased by compromises. Thus in Ingram vs. Little," where the opinion was delivered by Nisbet, J. it was held that an agent to fill material blanks in a deed must have authority under seal. But to gain the assent of the great iconoclast judge, the judgment was expressly limited to the case made in that record. We see evidence of this fact in the opinion of Lumpkin, J. in Drumright vs. Philpot. where he says: "It is not my present purpose to controvert the old rigid doctrine of the common law which asserts that no prior authority or subsequent ratification, either verbal or by writing without seal, is sufficient to give validity to an instrument, as the deed of the party. I yielded a reluctant assent to this threadbare technicality in Ingram vs. Little." He also refers to his opinion in Lowe vs. Morris: "Having discharged my duty to the country by doing what I could, in Lowe vs. Morris and another, to bring the modern scrawl, misnamed a seal, into merited contempt. I shall content myself,"

The learned judge then falls into line with those modern decisions which establish an exception to the old common law rule by holding that a prior authority, or subsequent ratification, of any sort, by the other partner, will make the deed of one partner the deed of the firm. The old common law allowed this effect only when the other partner was present at the execution consenting thereto. We may well believe that to this exception the conservative judge "yielded a reluctant assent." There is evi-

o 16 Ga. 424.

n 14 Ga. 173

p In reading the opinion referred to, it cannot be seen that any difference is made between the scroll and seal, but both are treated alike. Did further reflection bring about a private retraction, here indicated, as regards the ancient seal? Querc.

q See note. p. 75 of Smith's Merc. Law (third American edition, Holcomb & Gholson), where the authorities are reviewed, beginning with the opinion of Judge Story.

<sup>&</sup>quot; r Smith's Merc. Law, p. 75-6; 2 Blackst. Com. 305, note (14).

<sup>#30</sup> Ga., 280.

In Rowe vs. Ware, Stephens, J. declares for the conservative policy in these pregnant terms: "The court has before held that an authority under seal is necessary to authorize an agent to sign a sealed instrument. Whether the rule be a reasonable one or not, is not the question; it is too firmly fixed in the law to be disturbed by courts. It is a case for the legislature only."

Before leaving the subject of the seal in Georgia, a brief generalization may not be amiss. Historically the seal is a substitute for signing, made necessary in the case of individuals by illiteracy. in other cases by the nature of the obligor or the kind of attesta-Neither a court, nor a corporation, nor an officer (in that capacity), nor a government can have a handwriting. And so, as regards these, the seal has come to stay. But in the case of individuals, it seems the signature, or essence, must inevitably take the place of the seal or representation. With the individual seal must disappear all the doctrines consequent upon it. Those who are still unable to write their names will have the privilege of signing with a cross. Such is the tendency of all that has been said and done in our law on this subject. The perpetuation of the cross-mark as a mode of signing for the illiterate, is a remarkable instance of the greater permanence of Saxon as compared with Norman institutions.

I thank you most sincerely, gentlemen, for the patient and considerate attention with which you have honored me, and have only a word more to conclude. It is in pursuing even such imperfect inquiries as these that one cannot fail to be impressed with the immensity of jurisprudence.

"Age cannot blight, nor custom stale Her infinite variety."

The grand sight of this universal temple of justice, rearing her proud proportions above all wrecks of time and circumstance, is for a favored few. Her pillars strike to depths immeasurable by human philosophy; her ever-widening walls take in the whole family of man; and yet her tallest towers reach but tremulously upward, striving with unutterable earnestness towards the eternal fountain of all truth and right. What if her sacred courts are sometimes fouled with thieves and money-changers? The scourging hand of some Heaven-born reform will purge and cleanse them out, and bring men back to purity of worship in the temple of their fathers' God.

## APPENDIX No. 9.

## REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the Georgia Bar Association:

The Committee on Jurisprudence and Law Reform beg leave to report:

At the last meeting of this Association the communication of the Alabama Bar Association, respecting a codification of the law of negotiable instruments (which communication may be found in the proceedings of this Association, at the meeting in 1886, p. 207,) was referred to this committee. That communication recommended the adoption of the English law, known as the "Bills of Exchange Act of 1882."

We regret that we have not been able to procure a copy of said Act, and are, therefore, not able to report on it. In accordance with the action of the Association, at its last meeting, (see published proceedings, pp. 49 and 50,) copies of the report of this committee at that meeting, which report is contained in said proceedings, p. 164 et seq. were furnished to the General Judiciary Committee of the House and Senate.

It has been suggested to the chairman of the committee, that inasmuch as the report of last year was acted upon at a time when the attendance was small, that it would be well, perhaps, to again call the attention of the body to that report, with a view of receiving a more careful and general consideration of the report, and especially so much of it as relates to the registry laws.

JAMES C. C. BLACK, Chairman.

## APPENDIX No. 10.

# REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

To the President of the Georgia Bar Association:

An examination of the published laws of this State for the years 1886 and 1887, with reference to the subjects entrusted to this committee, brings up for revision the following acts:

First. An Act approved December 24, 1886, to authorize the probate of wills made in other States of the Union, by citizens thereof, disposing by will of property in this State. A comparison of this Act with section 2434 (a) of the Code, Act of 1874, shows that said section is not affected by it. Comparing it with sections 2435 (a and b) of the Code, Act of 1878, it appears that section 2435 (a) remains untouched—that section 2435 (b) down to the clause immediately preceding the proviso, is repealed, so far as it relates to the mode of proving wills. The clause not repealed is the clause which affects wills not probated in other States. Comparing this Act of 1886 with the Act of 1883 on the same subject, it is plain that the first section of the Act of 1883 is repealed, but not the second section thereof.

The Act of 1886 violates the settled policy of this State, that real estate therein shall only be conveyed according to the laws of this State, and makes the laws of the other States the law of conveying property by will in this State. It also violates Article 4, Section 1 of the Federal Constitution, which declares the faith and credit to be given to judicial proceedings of other States. A new Act covering this whole subject of the probate of wills made in foreign countries and in other States of the Union, is much needed, and this committee, in order to facilitate this reform, has prepared such an Act, which will be found in an appendix to this report.

Second. An Act to change the Constitution of 1877, by increasing the number of associate justices of the Supreme Court from

two to four—a change which will probably be adopted by the people and prove of inestimable value. We say of inestimable value, because it will produce a more thorough discussion of cases submitted to the Supreme Court, and sounder decisions, and will enable the judges to prepare opinions which will command the respect of the bar and prove landmarks in the law.

Third. An Act compelling an attorney to testify as to all matters of which he may have acquired knowledge otherwise than by reason of the relationship of attorney and client, or by reason of his anticipated employment as such attorney. This Act restores the law to the condition in which it was prior to the Act of 1866.

Fourth. An Act providing for the enforcement of special liens for rent in the same manner in which general liens are enforced. This statute repeals several decisions of the Supreme Court and dispenses with the pleadings heretofore required by the Supreme Court decisions, but not with the proof necessary to sustain the claim for a special lien.

Fifth. An Act to change the condition of the claim bond in attachment cases, so that the claimant's bond must be for a sum not larger than double the amount of the attachment levied, unless the property attached is of less value than the amount claimed in the attachment, when the amount of the bond shall be in double the amount of the property attached. When we remember that the condition of the bond so changed had existed from 1836 to 1887—had met the approval of Judge Cone, in his revision of the attachment laws in 1855, and had been adopted by the codifiers in 1861, we may well pause to admire the courage of that legislator who attacked and conquered a wrong so venerable for its age and so repected by genius and learning.

Sixth. An Act to allow the successful litigant in cases tried before the Superior Courts of this State, to file a bill of exceptions for a revision of alleged errors committed against him, and to require the Supreme Court, if a new trial is ordered, to decide upon the points made by the successful party to the case in his bill of exceptions. The only change made by this Act in the existing law as found in the Code, section 4251, is that the Supreme Court shall consider and decide upon the points raised in both bills of exceptions, if a new trial is ordered, as well by affirmance as by a reversal of the decision of the Superior Court.

Seventh. An Act giving husbands and children, if any, the right in all cases where homicides are the result of crime or criminal neg-

and injury, the full value of the life of the wife and mother, without any deduction for necessary and other personal expenses of the deceased: also giving a mother, and if no mother, a father, the right to recover for the homicide caused by crime or criminal negligence of a child who is a minor or sui juris, when she or he receives a full or partial support, voluntary or otherwise, from such child, unless said child leaves a wife, husband or child surviving. the full value of such child's life, without deduction, as above described; also a widow, and if no widow, a child or children. the right to recover for a homicide caused by crime or criminal negligence the full value of the life of the husband or father against the party committing such wrong and injury, without deduction for necessary and other personal expenses of the deceased, had he have lived. Of this Act it may justly be said, it gives compensation for injuries beyond the extent of the injuries: in other words, it violates the general principle of law which declares that private property shall not be taken from one person and transferred to another for the private use and benefit of such other person, and that it gives compensation for injury to persons who have no legal claim for any compensation.

Eighth. An Act to provide for the sale of trust property, requiring a full report of the sale and re-investment of the proceeds of such sale, and giving the Judge, who orders the sale, a right to reject the re-investment and enforce another investment, and also giving the parties to these proceedings before the Judge the right to report any failure of compliance with the orders of the Judge. The right here given to the Judge to reject re-investments and enforce re-investments, fills an omission in the law.

Ninth. An Act to provide for the amendment of affidavits for the foreclosure of liens, which repeals, to a certain extent, section 3504 of the Code. This change in the law is consistent with other provisions of the Code which allow amendments of affidavits of illegality, and sworn bills in equity.

Tenth. An Act to allow plaintiffs in fi. fas. in claim cases, the right to withdraw the fi. fas. from the office where deposited, placing in said office a duly certified copy of said fi. fa. This Act was rendered necessary by a decision of the Supreme Court denying plaintiffs in fi. fas. the right to withdraw the fi. fas. pending litigation thereon—sometimes a most necessary step for the pro-



tection of the plaintiff's rights and which could not possibly injure the claimant.

Eleventh. An Act providing the means by which a vendor of personal property, reserving the title, may collect his debt for the purchase money in the same manner as a vendor of real estate. This form of sale of personal property coming into use since the war has given rise to much legislation. First, an Act was passed requiring such sales to be in writing except as between the parties to the sale; second, an Act requiring a record of such sales. as in case of mortgage of personal property; third, the Act under consideration, providing the means of enforcing these sales. It would seem that legislation on this subject was now exhausted, yet who can so affirm.

Twelfth. An Act to provide a uniform mode of procedure in civil cases, except as therein provided. The first two sections of this Act allowed all civil suits pending in the Superior Court to be tried, with reference to legal and equitable relief and remedies in the same trial, will prove valuable in judicial administration.

Passing from a further consideration of the Acts of the last General Assembly, to the matters specially referred to this committee, we come first of all to the subject of improving the present jury system. We affirm that such improvement can and should be made by Acts to the following effect:

Require Judges of the Superior Court in drawing jurors, before changing the names drawn from one box to another, to make a list of the same, designating for what service, whether as grand or traverse jurors, and then to place said list in an envelope, to be at once sealed and delivered to the Clerk of the Superior Court. not to be opened or interfered with in any way until ten days before their service shall begin. At that time the same must be opened by the Clerk of Superior Court and Ordinary of the county, who shall make a correct entry of such lists on the minutes of the Superior Court signed by them, and said Clerk shall at once issue a venire facias directed to the Sheriff or his deputy for By such an Act the opportunities so graphically described by the lamented Judge Hall in his address to this Association for "horse sheding and pillowing," would be in a large measure removed. If the Judge of the Superior Court was required to draw, as traverse jurors, eighteen names from the box of traverse jurors and twelve names from the box of grand jurors, to be summoned as traverse jurors for the trial of civil and

criminal cases, another great improvement would be made in our jury system.

We suggest, as a still further improvement of our jury system, that in all cases pending in the Superior Court not appealed from the Justice Court, or the County Court, when a new trial is allowed by the Judge of the Superior Court or by the Supreme Court, such new trial shall be had before a jury stricken from the grand jury. As to the proposition submitted to this committee, giving the State the right to make motions for new trial in criminal cases where the defendent had been acquitted, we report the same, if desirable, as not practicable.

In relation to the proposition referred to this committee, looking to a disposal of cases at the first term, we would suggest that if parties contracting to pay money, should agree to their contract in writing, that suit upon such contract might be tried at the first term after such suit was begun, there seems to be strong reason to believe that such change might be made by the General Assembly.

W. M. REESE.
GEORGE HILLYER.
HARRY JACKSON.
L. A. DEAN.
A. S. CLAY.

#### APPENDIX.

An Act to regulate the probate of wills made beyond the limits of this State, in the United States, and also of wills made beyond the limits of the United States.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That all wills of realty made by persons residing beyond the limits of this State, in the United States, or beyond the limits of the United States, disposing of realty in this State, must be executed as the laws of this State require as to the execution of wills of real estate, and that all wills made by the same persons, disposing of personalty in this State, must be executed according to the laws of the place where such persons reside.

SEC. 2. Be it further enacted by the authority aforesaid, That all wills provided for in the first section of this Act, and not probated

where the makers of the same reside, may be probated in this State, in common or in solemn form, in the county where such real or personal property may be located, by the testimony of the witnesses to the same, in open court, or by testimony taken by interrogatories from the witnesses to the same, in the same manner and at the same time, as in wills of persons resident in this State

- SEC. 3. Be it further enacted by the authority aforesaid. That when the wills specified in the first section of this Act. have been probated in solemn form in the proper courts of the State, within the United States, where such persons reside, the same may be proved in any county of this State where there may be realty or personalty disposed of by said wills, by the executors named in the same or by persons interested in the probate of the same. when no such executor is appointed, when the testator resides in another State, or if any such executor refuses to prove and execute said will by means of an exemplification from the records of the court where so proved in solemn form, certified according to the Act of Congress, dated 26th May, 1790; and may be attacked on the same grounds, and no other, as other proceedings of courts. duly certified and exemplified. If the probate of the wills herein specified has not been proved in solemn form, but only in common form, they must be proved as in the second section of this Act provided.
- SEC. 4. All the provisions of the Act of 1874, as found in section 2434 of the Code, are hereby continued in force, not, however, so as to interfere in any degree with persons desiring to prove wills specified in the first section of this Act, by testimony in open court, or by interrogatories in any county of this State where real or personal property may be located, in the same manner and at the same time as wills of persons residing in this State.
- SEC. 5. Be it further enacted by the authorty aforesaid, That the proceedings to prove the wills provided for in this Act shall be the same as to form, giving notice to parties interested, and the conduct of these proceedings in court, as are required in relation to wills executed and proved in this State, except wills proved in solemn form in other States, and proved in other States by exemplification.
- SEC. 6. Be it further enacted by the authority aforesaid, That any wills embraced in the provisions of this Act for the probate of

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the same, may be executed in this State by the executor therein named, he qualifying and receiving letters testamentary, as provided by the laws of this State; and if any citizen of this State is interested, and shall so require by filing a petition with the proper Court of Ordinary, said executor shall give ample security for the protection of the rights of such citizen. When such executor shall have so qualified and received letters testamentary and given security, if the same is required of him as above stated, he may then execute said will, as a domestic executor, with the same rights and liabilities. If no executor appears to execute any will proved under the provisions of this Act, then the same may be administered by some person appointed administrator with the will annexed, according to the laws of this State.

## APPENDIX No. 11.

#### MEMORIAL OF HON. SAMUEL HALL.

Samuel Hall was born near Land's Ford, on the Catawba river, in Chester district, S. C., on October 20th, 1820. In 1839, he came to Georgia and entered Franklin College at Athens, being then nineteen years old, where he graduated in 1841. He then went to Knoxville, Ga., his father, Dr. Hall, having moved from South Carolina to Crawford county; and there he studied law and was admitted to the bar at the March Term, 1842, of Crawford Superior Court. He began the practice of his profession at Knoxville. On March 16th, 1843, he married Miss Sarah Ashe, of Wilmington, N. C. In 1845 he was appointed Solicitor-General of the Flint Circuit, which then embraced all the territory now embraced by the Flint and Macon Circuits. In Knoxville he was associated in the practice with J. L. Wimberly (afterwards Judge of the Superior Courts of the Chattahoochee Circuit, and now residing in Lumpkin, Ga.) In 1848, he removed to Macon and formed a partnership with his brother, Robert P. Hall, a man of distinguished ability. He continued to practice in this relation till 1852, or 1853, when he moved to Oglethorpe, in Macon county, and formed a partnership with Stephen F. Miller, Esq. In 1856. he was an elector on the Buchanan ticket. He practiced in Oglethorpe till 1867, when he moved to Fort Valley. In 1870, he returned to Macon, and formed a copartnership with Hon. Washington Poe. This partnership lasted till Mr. Poe retired from the practice about 1875, after which he formed a partnership with C. L. Bartlett, Esq., and Col. W. A. Lofton. From 1876 to 1882, he practiced with his son, Joseph H. Hall, Esq., who is at present a member of the Macon Bar. In November, 1882, he was elected Associate Justice of the Supreme Court of Georgia. In 1886, he was re-elected to that position and held it till his death. He died on August 27th, 1887, at Mount Airy, Ga., where he had gone for rest and recuperation. His remains were buried at Albany, Georgia.

Judge Hall was a man of distinguished ability. He had a memory that retained every impression made upon it with wonderful accuracy. He was a patient, painstaking and thorough scholar, and his decisions while on the Supreme Bench bear evidence of his wide and exact learning. His sound judgment and fine sense of justice and equity gave his judicial work a special interest and influence. Modest and unassuming, he gave to every cause a patient hearing, and his honors came to him as tributes to his high worth.

The Committee on Memorials beg leave to submit the foregoing report.

F. G. DUBIGNON, Chairman.
J. R. LAMAR,
H. A. MATHEWS,
JAS. BISHOP, JR.,
CLEM P. STEED.

Committee.

#### MEMORIAL

ADOPTED BY SUPREME COURT, AND ORDERED SPREAD ON THE MINUTES OF THE GEORGIA BAR ASSOCIATION.

May it please the Court: If one should examine the last published volume of the reports of this court to ascertain who are its judges, he will find the names of James Jackson, Samuel Hall, and Mark Blandford; and yet two of the three (Judges Jackson and Hall) have died since the opinions contained in the volume were rendered. If the one thus examining should know the history of the court from its organization in January, 1846, to the present, he will at once realize that of the twenty-four Judges who have presided, but eight survive, including the present bench. This astonishing fact not only furnishes the common reminder of the uncertainty of life, but of the large per cent. of mortality among our Supreme Court judges.

When we look back along the line to the first bench of judges, composed of Joseph Henry Lumpkin, Hiram Warner and Eugenius A. Nisbet, we find among them the ablest of jurists, and the purest of men, and save the eight, all are in "the spirit land." Before there was time to recover from the shock of Chief Justice Jackson's death, we had to mourn the death of Associate Justice Hall. The death of either was a great sorrow, but the death of

both, in such close proximity, was a public calamity. They were true and typical Georgians, of nearly the same age, contemporaneous as lawyers, and nearly so as graduates of their Georgia Alma Mater.

While lawyers and judges, old and young, must appreciate the worth, and lament the death of the judges of this court, yet it touches keenly the survivors of this bench, and all who traveled any distance with them the lawyer's journey of life.

All these can truly say:

"They were the loveliest of their race,
Whose grassy tombs our sorrows steep,
Whose worth our souls delight to trace,
Whose very loss 'tis sweet to weep."

From the contemplation of those already wept and honored, we must arouse ourselves to perform our duty as chroniclers of Judge Hall, and pay our tribute, small though it is, to his virtues as a lawyer, judge, and gentleman.

His place of birth was Chester district, South Carolina, and the date October 20, 1820. His father was Ezekiel Hall, an eminent physician, and his mother Julia Hill. Although a native of South Carolina, his ancestry were identified with Virginia and North Carolina. His father was descended from the emigrants of the Bermuda Islands to Virginia, who located at a place they named Bermuda Hundreds. His mother was descended from the Ashes and the Hills, of North Carolina, names ancient, honorable and historic. A maternal grandfather (William Hill), was in the early days of the republic a member of the United States Congress from North Carolina, and afterwards a Federal judge. A maternal great-grandfather (John Ashe) was a General in the Revolutionary war. The descendants of these ancestors are numerous, and permeate every section of North Carolina, and extend into other Judge Hall's kindred may be found from the Atlantic to the Pacific, and from Canada to the Gulf, and wherever found yet preserve, in a greater or less degree, the old family characteristics of intellect and integrity. He was prepared for college at Hillsboro. North Carolina, by his teacher, Mr. Bingham. He entered the University of North Carolina in 1837, but his father moving to Georgia, changed to Franklin College at Athens, afterwards the University of Georgia, and there was graduated in the year 1841. Among his classmates were Luther J. Glenn, a distinguished but deceased member of the bar of this court; Gideon A. Mallette, a

planter and preacher, of Camden county, Georgia, yet surviving: Charles Berrien Jones, of Liberty county, deceased, who was a prominent lawver of the Eastern Circuit, and, in 1853, a senator from his district: Thomas R. R. Cobb. whom to name is to know for his eminence in Church and State: and Joseph LeConte, now the Professor of Chemistry and Geology in the University of California, and who is known for his learning and his virtues throughout the United States. Though not in his class, but in college, during some time of his term, were Judges Robert P. Trippe and Alex. M. Speer and Linton Stephens, Dr. John LeConte, the Rev. Dr. Benjamin Palmer, and the Rev. Dr. Jabez Curry. three latter named have filled the world of science and religion with their fame. We may be excused for proclaiming that those named are Georgians, or identified with the State, of whom we are proud, for the grand distinction they have given Georgia and Georgians. We can better understand and appreciate Judge Hall when we consider him in the relation he bore to these eminent men, just as we can better judge of the recent when we know the past.

After his college career, Judge Hall went to his father's home at Knoxville, Crawford county, and was admitted to plead and practice law in the superior court of that county in the month of March, of the year 1842. Just one year afterward, he was married at Wilmington, North Carolina, to Miss Sarah Grove Ashe. Of this marriage there are five sons and two daughters, all living The mother vet survives, and can look back with pride upon the blessings her efforts have received in the rearing of her children, and the help in truth she was to her husband throughout all the vicissitudes of his life. Judge Hall held but few offices, and these were mostly in the line of his profession. This was owing to his distaste to politics—indeed, his want of adaptation to it from his studious habit, and his love of the law and its practice. Before his election to the Supreme Court judgship he had been Solicitor-General of the Flint circuit, and was a Democratic Presidential Elector in the year 1856 from his reputation as a lawyer, he was as well-known throughout Georgia, as politicians of his age. He practiced with and under those old lawyers, who had won renown before the organization of the Supreme Court, who had to go to the original sources, like Coke upon Littleton, Bacon's Abridgment, Hale and Mawkin's Pleas of the Crown, the old common law reports, like Dyer, Plowden and Coke, and there dig and delve for the law of the case.

which perhaps was contained in a sentence of law Latin or Norman French.

The young lawvers of to-day with their annotated Code of 1882, the 76th volume of State Reports, the digests to them, and the American reports, know nothing of the labors of the Georgia lawvers of forty and more years back. The first judges of the Supreme Court learned their law from these sources. Judge Hall was thrown in contact with the most eminent lawvers and judges of that time. Among them were Judges Strong, McDonald and Tracy, of the Flint Circuit; Judges Iverson, Wellborn and Sturges, of the Chattahoochee: Warren, of the Southwestern: Cone, of the Ocmulgee; and Law and Nichols of the Eastern. John McPherson Berrien, Seaborn Jones, Walter T. Colquitt, and William Dougherty, were among the specimen practitioners of the lawvers of middle and southern Georgia, who antedated our Supreme Court. From such intellects. Judge Hall learned his law, his method of preparation and presentation of a case, and the course of reasoning by which conclusions were reached. Thus were the foundations of his knowledge deep and well laid, without which there can be no substantial and permanent superstructure.

Judge Hall resided where he was admitted to the bar until 1848, when he removed to the city of Macon, where he practiced in partnership with a younger brother, Robert P., but commonly called Bolivar Hall. His brother had intellect of the highest order, and was ranked with the ablest young men of the profes-In the earlier volumes of the Supreme Court will be found several important and difficult cases he successfully argued; and in one or more opinions the judges gave special testimony of his superior ability. He was a lover of general literature, and was a poet as well as a lawyer. But, alas! here comes in the old sad story; death ended his career before it was well begun. A sketch of him is in Miller's "Bench and Bar." Judge Hall, with that brotherly affection and that true unselfishness which characterized all his thoughts and actions, took no umbrage, but felt a pride, if any one should say Bolivar was intellectually the more gifted.

From there, in 1853, he changed his residence to Oglethorpe, in the county of Macon—a then new and booming town—and there remained until 1867, practicing in partnership with that "gentleman and scholar," Stephen F. Miller, author of the "Bench and Bar of Georgia." This period of fourteen years covers the most

important period of Judge Hall's life, during which he acquired his reputation as a lawyer that he sustained and increased until his life was "rounded" by the sleep of death on the 28th August, 1887, at Mt. Airy, Georgia. Geographically convenient to several circuits, his practice was more or less in all of them—the Flint, the Macon and the Southwestern, were those organized, which included all the counties of the afterward Albany circuit. After the war (in 1870), he again moved to the city of Macon, and practiced in partnership with Washington Poe, whom "all delighted to honor." He resided there until elected a judge of this court in 1882.

He was admitted to practice at the bar of this court the first year of its organization, and from the first volume of its Reports to the 76th (the last issued) his name appears either as counsel or judge. There are but few lawyers or judges of our State who can match his record. It is so for the obvious reason that those who can must have been young at its organization—must have continued in the practice, and must have lived to three score and ten, or nearly so.

Judge Hall was elected a trustee of the University of Georgia in 1867, and so continued till his death. He took an anxious interest in the prosperity of the University, and was always present at the regular meetings of the trustees. He was also a trustee of the University of the South, at Sewanee, Tennessee, an elevated institution of learning, under the control of the Protestant Episcopal church;—a position he could not have held unless he had been an honored and distinguished communicant.

From the foregoing brief summary of facts in the history of Judge Hall, it is manifest that he has to be considered as a politician, a lawyer, a judge, and a Christian. He reached the years of discretion and manhood when the Whig party was advanced from a local and sectional to that of a general and national party, and made its first fight throughout the nation, and won its first victory in the election of General Wm. Henry Harrison to the presidency. At that election, in November, 1840, Judge Hall had not quite attained his majority, and therefore could not vote. Had he voted, it would certainly have been for General Harrison, as he afterwards did for Henry Clay and Zachary Taylor. But the Whig party as an organization was sacrificed to the loose construction and abolition element within it, who through their leaders controlled it. As a consequence, in the



campaign of 1852, it lost so largely of its Southern allies, that Franklin Pierce, the Democratic candidate, was elected by such a majority as to forever end the Whig party as a separate national organization. In 1856, its disintegrated elements re-organized under a new name (that of Free Soil) and came very nearly electing its candidate. John C. Fremont, over James Buchanan. It was in 1852 that Judge Hall, with so many others, refused longer to co-operate with the Whig party, and in 1856 he was one of the Buchanan electoral college that cast the vote of the State of Georgia for that statesman, and from that time he has remained a member of the Democratic organization. While firm in his principles and true to his party, he was not conspicuous as a politician, because the methods of a politician were contrary to his taste and temperament, and he found more congenial employment in the study and practice of law. A few years prior to the war, he had a long and most painful spell of illness from inflammatory rheumatism. that resulted in the disuse of one of his arms and hand, and so remained that it was years until only a partial use was regained. His former health and strength were never fully recovered.

While politics were not tasteful to Judge Hall, the study and practice of law were so in an exalted degree. Law suited the natural turn of his mind. He was gifted with a nice sense of right and wrong, and loved the attainments of justice through the forms of law. He was fond of research, and the older the book and the more difficult it was to master its learning, the better he liked it. Accompanying this love of research was the quality of patience. Back of all this was a memory almost phenomenal, and a power of concentration that could wholly absorb his mind. With the aid of these, he was able to utilize all he had read whenever occasion offered, if it was years after. A mind thus formed and cultured would instinctively, upon the arising of any question, fortify itself with authority. Thus, when he made an argument upon any question of importance, his arguments were always exhaustive of the subject, and whether he prevailed or not, he always threw upon it the light of all the legal lore to be found in the books, old or new. Chief Justice Lumpkin, in the early years of the court, in a lecture he gave the young members of the bar, advised them to rely upon authority more than argument; for, said he, "a child before us with a book in his hand will have more weight than if Cicero himself were here, in all the pride and prime of his

unsurpassed oratory." Sam. Hall did not need that lecture, as most did, he had already and naturally taken it at the beginning. So uniform was this habit, and so accurate and retentive was his memory, he was regarded a walking cyclopedia of cases. He not only remembered the cases and the volume where the principle was pronounced, but often remembered the names of the parties and the number of the page. His elecution suited the display of this learning. He spoke in a distinct, clear tone, and with deliberation. He seldom was affected by the fervor or excitement of debate, but occasionally was: and when he was, he would arise to the heights of eloquence. Judge Powers, of the Macon circuit, before whom he practiced regularly for eight years, said that no lawyer of his court was the equal of Sam. Hall when he got where he could be unincumbered by the books. It might be expected that such a lawver would be a devotee to principle. The fee with him was a secondary consideration—in fact only an incident. If he gained the case, and on the right principle, the fee could take care of itself. If he gained it, and on the wrong principle, the fee was no compensation. If he lost the case rightly, fee or no fee, he was content. A virtuous spirit like this, standing out amidst the weakness and wickedness of human nature. "lifts mortals up," or, as glorious Goldsmith expresses it, his heaven began e'er the world departed. Thus equipped and thus recorded. he was elected an Associate Justice of the court: and what was refreshing in these times of combination and selfish scheming. upon his own merit. It was an honor to the legislature that elected him, as well as to him. His qualifications were eminent in at least three respects. He had long experience, and was in the full maturity of his extraordinary mental qualities. He remembered better, perhaps, the old established principles of the common law than any living Georgia lawyer, and what had been decided by our Supreme Court from the first volume to the last. As he had argued no case without thorough preparation, he would decide no case without it. An examination of his written opinions will manifest the presence of the qualities named. They are models of research and thoroughness. When, yet wearied by the labors of court in term, and in the hottest days of a hot summer, with that same spirit and habit, he was completing his opinions in several long and important cases, he was suddenly stricken for death, and died at his post a martyr to duty.

Besides his thoroughness of investigation, he was thoroughly

conscientions. He had a heart as well as head, and those acted in the harmony designed by the God of nature. There can be no perfection of emotion that is not subordinate to the intellect. There is no perfection of thought that does not derive aid from the heart. The one acts as a stimulant or brake upon the other. so that when the conclusion is reached it is the right one, whether considered from the standpoint of the head or heart. The head. however intellectual, needs more or less of the sunshine of the heart. This may be illustrated by the intellectual and moral qualities of the human acting in concert and not in antagonism. There is no virtue so requiring the presence of both these qualities as justice, and justice is what the judgment ought to render. It is true there is a distinction between a moral and a legal right. but this distinction is only to a limited extent. It does not go so far as that there may be a legal right unsustained by a sound moral. If so, then good men and women will be amazed at the discovery that bad morals can be good law. And in law, what is the foundation moral? Common honesty between man and man, and a vet better quality of honesty between man and woman. The science of jurisprudence, if that can be called a science which must be flexible enough to adjust the infinite variety of human affairs, is like all others-progressive. As the world makes history, men and communities grow out of certain conditions and into other conditions. There is, without doubt, a legal, political and social evolution. Lord Coke, the great light of law three centuries ago, would now rank as a learned and ingenious quibbler, and if Macaulay is authority, in addition, as a "bad-hearted pedant."

At that early day Lord Bacon saw the wrongs that followed from an adherence to "barren precedent unsupported by principle, or conflicting with it," and proposed to amend the laws of England and prescribe a plan for expounding them, but neither proposal was accepted. The reform he foresaw the need of, however, came gradually by occasional legislation, and through the latitude taken by the judges for expounding them in the interest of justice, until the bar and the people had become educated to a point where Lord Mansfield was able and potential enough to brush away the superannuated cobwebs that festooned the temples of justice. Following close after him, this country was blessed with the administrations of Marshall, Story and Taney in the United States Supreme Court, and of other judicial luminaries of the State courts,

mecessary to a judge of a supreme tribunal. He understood the principles which lay at the foundation of our National and State governments. He not only understood them, but was imbued with them, and was in full harmony with the moral and religious, as well as the legal, features of our social system. He entered on his duties with no prejudices or biases, or other infirmities to overcome. Could he have been cast into a statue, it would have represented loyalty to truth, to justice, and to every virtue as well as to law in his character as judge, which was his highest obligation.

We turn from Judge Hall's public to his private character. The two were in harmony, which sometimes unfortunately is not the case. He did not have one face for the public and another for his family and friends, but was the same gentle, genial, confiding and affectionate man with all, as was consistent with a sense of propriety. Abroad he impressed all the impressible with the sincerity and kindness of his nature, and at home he lived in sweet companionship with his wife and children. His most patent and conspicuous moral trait was the combined earnestness and simplicity of his heart. It might have been of such a man it was said. "he was an Israelite in whom there is no guile." In his last illness his many friends throughout Georgia and other States watched with affectionate anxiety for the telegrams that told of his condition until all hope had vanished. His spirit fled, when, as the last kind act his friends could do for him, they conveyed his body to the beautiful cemetery of Albany, Georgia, where in the changes made by time and fate, it so happened, that there were more of his family than at any other point. Albany had been for more than a third of a century his second home, so much was he there on legal and social occasions. And now it is his only earthly home, and around his grave are gathered all his family, save two.

Judge Hall was one of those fortunate men who had faith—the faith that is "the gift of God"—the faith that can "remove mountains." Faith in God, faith in Christ, faith in revelation, and faith in the plan of salvation. In it he was not demonstrative nor controversial, but not the less firm and fixed. Before that came in the process of time, with his growth of years, he was prepared for it, for with one so tender, confiding and unsuspecting, his mind was suited for its place of abode, and there to grow and

flourish. This naturally bore him to the church of his choice, where he was happy in its sweet communion, and in time was honored by bishop, rector and laymen.

The source from whence emanated so able a lawyer, so good and just a judge, so firm a Christian, must have been a high type of native manhood. That type which blesses the world with good fathers, good husbands, good Christians, good neighbors and good friends. That type which bears with modesty the favors of fortune, and with fortitude the frowns of adversity. That type which keeps its honor unsullied, and its courage undaunted. In short, that type so strongly and beautifully described in these lines:

The man whose mind, on virtue bent,
Pursues some greatly good intent,
With undivided aim;
Serene he holds the angry crowd,
Nor can their clamors, fierce and loud,
His stubborn honor tame;
Not the proud tyrant's fiercest threat,
Nor storms that from their dark retreat
The rolling surges wake,
Not Jove's dread bolt that shakes the pole,
The firmer purpose of his soul,
With all its power can shake.

RICHARD H. CLARK, Chairm.,
RICHARD F. LYON,
JOSEPH E. BROWN,
WM. W. MONTGOMERY,
ROBERT P. TRIPPE,
ALEX M. SPEER,
HENRY R. JACKSON,
CHARLES L. BARTLETT,
JOEL A. BILLUPS,

J. M. DUPREE,
JESSE W. WALTERS,
CHARLES C. KIBBEE,
W. A. LOFTON,
ROBERT S. LANIER,
HOWELL COBB,
DAVID A. VASON,
GEORGE W. JORDAN,
A. L. MILLER,

H. CLAY FOSTER, Committee.

MEMORANDUM.—Since appointment of committee, and before action taken, Hon. James M. Russell died.

## APPENDIX No. 12.

# SHOULD THE LAW REGARDING IMPROVEMENTS IN EJECTMENT BE MODIFIED; IF SO, HOW?

PRIZE ESSAY, BY CLEM P. STEED, MACON, GA.

[SRE MINUTES.]

"I brush out of my mind all fiction in an ejectment, the nominal plaintiff and nominal defendant, the casual ejector—the dramatis personæ, or actores fabulæ," says an English Lord Chief Justice, in speaking of the action of ejectment; and in truth this action is a bundle of empty forms, the skeleton of a once living reality. When used for a purpose not originally intended for it—when "licked into the form of a real action"—it lost its vitality and its procedure once animated by living realities, is now satisfactorily filled by accommodating fictions.

But however absurd it may seem to rattle the bones of a legal skeleton, in order to determine the title to a tract of land, the question before us relates, not to the form of the action, nor to the action itself, but to the substance affected by it—the improvements made on the land by the ejected defendant.

To determine whether or not the present law regarding improvements in ejectment should be changed, we will first endeavor to ascertain what that law is.

Section 3468 of the Code of Georgia is as follows: "A trespasser cannot set off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or the improvements which have been made. In that case the jury may take into consideration the improvements or repairs, and diminish the profits by that amount, but not below the sum which the premises would have been worth without such improvements or repairs."

Section 2906 of the Code says: "Against a claim for mesne profits

the value of improvements made by one bona fide in possession under a claim of right, is a proper subject matter of set-off."

Before proceeding further, it might be well to determine what is meant by the terms, "improvements," "profits" or "mesne profits," and "bona fide possession."

An improvement is something done or put upon the land which is in fact or in law a fixture and part of the freehold. Its character must be such as to make the land more valuable for the ordinary purposes for which such property is owned and used. It must be necessary, substantial and permanent, and beneficial to the owner of the land. Sedgwick and Wait on Trial of Title to Land, section 699; 71 Ga., 810; 1 Sawyer, 15; 61 N. Y., 397; 60 Ga., 466; 2 S. E. Rep. 937.

By possession in good faith, is meant the possession of one who believes he has good title, and has no notice of the adverse claim. Sedg. on Damages, 126; Green vs. Biddle, 8 Wheat, 1; Bright vs. Boyd, 1 Story, C. C., 478; 15 Tex., 307. Possession is presumption of good faith. 1 Sawyer, 15; 10 John (N. Y.), 356. See also Sedg. and Wait on Trial of Title to Land, section 694.

Mesne profits and damages are limited to a strict compensation, and the loss and damage must be shown in detail, to which proof the verdict should conform. Sedg. and Wait on Trial of Title to Land. Section 665; 20 Ga., 523; 41 Ga., 42; 58 Ga., 129; 19 Ga., 583.

"Whatever would be rent between landlord and tenant, is mesne profits as between the parties in ejectment." 60 Ga., 466.

Mesne profits should not include the income resulting from the improvements. Such profits do not come from the owner's land, but from an independent source—are the results of defendant's own labor and capital. Sedg. and Wait on Land Titles. Section 678; Jackson vs. Loomis, 15 Am. D., 347; 38 Miss., 401; 1 Johns Ch. (N. Y.), 385; 19 Ind., 392; 30 Wis., 308.

Defendant is not liable for mesne profits further back than his own possession dates, unless he claims improvements made before that time. 58 Ga., 539; 47 Ga., 545.

The two sections of the Code of Georgia above quoted, embrace the statute law of Georgia on the subject of improvements, but they, like every other statute, are subject to construction by the courts.

Judge Lumpkin decides that improvements made by a bona fide purchaser may be set-off against a claim for mesne profits and damages, and that where the profits of the premises have been increased by the improvements, a trespasser should be allowed the value of the improvements made by himself, to the extent of reducing the profits to what they would have been on the premises unimproved. Beverly vs. Burke, 9 Ga., 440.

This seems to have been the rule afterwards embodied in the sections of our Code just cited. See 69 Ga., 818.

Chief Justice Warner decides that, "The equitable right of a trespasser to be allowed the value of his improvements made on the land, where the value of the premises has been increased thereby, is clearly recognized by our law, as well as when improvements have been made by one acting in good faith under a claim of right." In this case the defendant was a bona fide possessor. and the court decides that the property in dispute in the case should be sold and both claims paid; first, the plaintiff who held a mortgage f. fa. to be paid the value of the premises at the time they were bought by the defendant, with interest on that value from that date up to the date of the sale, and then out of the balance the defendant to receive the value of his improvements, provided the property sold for enough to settle both claims; but if it did not, then plaintiff's claim, as stated, to be paid, and the balance to defendant. McPhee vs. Guthrie & Co., reported in 51 Ga. 83...

Judge Hall, citing both of the above opinions, and also a case of Merritt vs. Scott, in 81 N. C. 385, deduces the rule, that when the premises are held bona fide, the party making the improvements is entitled to their full value. He also says that the Code makes a distinction between a bona fide possessor and a trespasser, and that in the latter instance the mesne profits are not to be reduced by off-setting the improvements below what the premises would have been worth without the improvements, while in the former instance there is no such limitation; the right of the bona fide holder to set-off his improvements "is unconditional and without qualification." But in this case the defendant went further and argued that not only should they set-off the improvements against the mesne profits, but that they should have a verdict for the excess of the improvements over the profits, which should be a lien on the land. This point the court declines to decide, on the ground that it was not properly made before them. Dean, ex'r, vs. Feely et al., 69 Ga. 804 to 824.

Chief Justice Jackson, referring to the foregoing decision, says:

"But the ruling on the facts allowed the purchaser only to extinguish mesne profits, but not to trench at all on the corpus, and in that case, too, there was no doubt about the bona fides of the purchaser." 75 Ga., 564.

Again, the court says, in a case where the claim for mesne profits had been abandoned, "whether in a proper case made with suitable pleadings, the defendants could get relief for substantial and permanent improvements made upon the land, whereby its value was enhanced, is not decided." 71 Ga., 813. See also 5 Ga., 288, 290; 75 Ga., 653, 680, 47 Ga., 540; 39 Ga., 328; Tyler on Ejectment, 849.

From these considerations we gather that in Georgia a trespasser, a mala fide possessor, can set-off his improvements against the mesne profits which those improvements caused or produced, but not so as to reduce the profits below what the premises would have been worth without the improvements, and that a bona fide possessor can set-off his improvements to the extent of extinguishing all the mesne profits, but can go no further.

Passing to the question of modifying the present law controlling improvements, its justice and equity will be considered as largely determining the question.

Say the court in 47 Ga., page 545: "The plea of improvements as an off-set to the rents is an equitable defence and should be regulated by the principles of justice and equity."

The distinction between a bona fide possessor and a mala fide possessor or trespasser, is clearly recognized in the authorities, and the rule relating to trespassers as contained in the Georgia Code, section 3468, cited above, seems generally to be sustained. 9 Ga., 440; 20 Ga., 523; 51 Ga., 83; 69 Ga., 804; 75 Ga., 653; 14 Am. D., 157; 15 Am. D., 347; 99 U. S., 513; Sedg. and Wait on Titles to Land, section 678.

Indeed this seems to be a just rule. It seems right that even a trespasser, who makes valuable improvements, should set them off againse the profits which they produce. To make such a defendant lose his improvements and pay profits on them besides, would be an unjust hardship. This part of the law, therefore, need not be modified.

The discussion is then narrowed to the case of bona fide possessors. By the common law the defendant could not claim his improvements. They were considered part of the freehold and passed with the recovery. 2 Kent, 334; 16 Iowa, 444.

"There is no case decided in England, Ireland or the United States, grounded upon common law principles, declaring that an occupant of land, without a special contract, is entitled to payment for his improvements as against the true owners when the latter had not been guilty of a fraud in concealing the title." Heron's History of Jurisprudence, page 715, quoted in 99 U. S., 539.

The civil law, however, was more liberal in cases of bona fide possessors and compelled the owner to re-imburse the improvements on the equitable rule "nemo debet locupletari aliena jactura." Just. Inst. Lib. 2, tit. 1, ort. 30. Pothier "Du Droit de Propriété." section 345: 2 Kent. 336. Chancery following the civil law first relaxed the vigor of the common law, and this was followed by the courts of law which allowed improvements to be set-off against profits. See Judge Dillon's opinion in 16 Iowa, 444. The reason of this change in the strict doctrine of the common law is well stated in the words of the learned judge in the opinion just cited: "The equity of the bona fide possessor who had made lasting and permanent improvements upon lands which turned out to be another's, was so strong and persuasive as to force its recognition to this partial extent by courts of law, without the aid of statute." And this "strong and persuasive" equity which induced so great a change in the past seems to demand further recognition Story, on the final trial of Bright vs. Boyd, 2 Story C. C., 605. says: "I wish in coming to this conclusion to be distinctly understood as affirming and maintaining the broad doctrine, as a doctrine of equity, that so far as an innocent purchaser for a valuable consideration, without notice of any infirmity in his titles, has, by his improvements and meliorations, added to the permanent value of the estate, he is entitled to a full remuneration, and that such increase of value is a lien and charge on the estate which the absolute owner is bound to discharge before he is to be restored to his original rights in the land. This is the clear result of the Roman law, and it has the most persuasive equity, and, I may add. common sense and common justice for its foundation." See 39 Md., 281; 6 Oregon, 31; 9 Pit., 204; 38 Bard, 488, and many other authorities cited. Again, in Griswold vs. Briggs, 18 Bla. C. C., 202, the court says: "There is a natural equity which rebels at the idea that a bona fide occupant and reputed owner of land in a newly settled country, where unimproved land is of small value, or where skill in conveyancing has not been attained, or

where surveys have been uncertain or inaccurate, should lose the benefit of the labor and money which he has expended in the erroneous belief that the title was absolute and perfect."

In Jackson vs. Ludeling, 99 U. S. 513, the court holds that under the Code of Louisiana and the general civil law, the purchasers of a dilapidated railroad, though not bona fide, were entitled, when a rescision of the sale for fraud was ordered by the court, to be repaid for reconstructing and repairing the road, and that if after accounting for the profits of the property there was any halance due for the ameliorations, they should have a lien on the property for such balance. This decision construes the Louisiana Code, which is based on the civil law as derived from the French and Spanish laws, and is probably an extreme case. See 69 Ga.. 821. In fact. Justice Field pronounces a strong dissenting opinion on the ground that the court had already held the defendants to be mala fide holders, from whom the true owners were constantly demanding restitution, and says: "I know of no law and no principle of justice which would allow them anything for expenditures upon property they wrongfully obtained and wrongfully withheld from the owners." See Southerland on Damages, Vol. 2, page 245; 5 S. E. Rep., 260.

In the case of a vendor, who fails to comply with his covenant of warranty, the measure of damages is purchase price and interest. savs Mr. Rawle in his Covenants for Title, page 327; and speaking of allowing the purchaser for his improvements, says, on page 330: "It is hard, they say, that a purchaser acting in good faith, should lose the valuable improvements wherewith his honest labor has enriched the land. This is indeed true, but it affords no reason why a vendor, acting also in good faith, should pay for them. Here are three parties all acting bona fide. The vendor, with the honest belief that the estate is his, sells it to a purchaser who, with the same conviction, improves it, and enhances its value perhaps ten-fold. The real owner, immediately on discovering his title, sues for and recovers his estate. How shall the profit and loss be adjusted?" Not by making the vendor pay for them, says the author, for "it is a familiar principle in equity that if the real owner of an estate invoke its aid for the recovery of the estate from one, who, acting in good faith, has put improvements upon it, that aid will be given to him only upon the terms that he will make due compensation to such innocent person, to the extent of the benefits which will be received

Jurisprudence, section 709 (a,) where the author says, "In such a case, if the plaintiff has fraudulently concealed his title, and has thereby misled the defendant, the title to this compensation is founded in the highest justice." And in section 1237, the same author says, that in all cases of this sort the doctrine preceds on the ground of fraud, or that the aid of equity is required, for if the estate is recovered at law improvements will not be allowed, except there be fraud. It is equity that gives relief in every case.

Equity, from the time it first inspired the English Chancery Court, has ever been encroaching, has ever been demanding and producing, great changes. Its benign and accommodating spirit is diffusing itself more and more through the rigid body of the law, throwing off from it the harsh eccentricities of antiquated and technical procedure and narrow rules, and conforming it gradually to the demands of a higher and more general intelligence, and a better and more universal sense of justice. Our legislature has conferred equity jurisdiction on our Courts of Common Law, as provided for by our Constitution. See Acts 1884-5. page 36. Our Supreme Court, impelled by this spirit of equity, have gone to the verge of our law in allowing improvements. In the 20 Ga., 190, they inquire, in a case of mutual mistake: "Will not equity in such a case decree compensation for improvements when they exceed the value of the rent?" In the 41 Ga., 118: "But we simply say, that equity will not permit injustice to be done, nor allow one tenant-in-common to get the benefit of improvements made by his co-tenant; under the honest belief that the title was wholly his." In Dean vs. Feely, 69 Ga., 804, cited above, the court declined to decide whether or not defendant should have a lien for the excess of his improvements over profits, on the ground that no such question was properly before them. also 71 Ga., 810, already quoted.

It might be urged that improvements go with the land, and that it is unconstitutional to compel one either to take or pay for improvements unsuited to him, which he did not authorize and cannot afford, or else sell his land notens votens.

In reply it may be said: "The making of lasting and valuable improvements requires time, and, when made by an adverse possessor, constitute an evidence of laches on the part of the real

owner. If the legislature can declare a lapse of time an absolute bar to a recovery, by enacting a statute of limitations, it certainly possesses the power to declare the lapse of time necessary for making such improvements a conditional bar." The true owner can rarely be without fault in not making known and asserting his title, especially as he ought to have known of its existence. If the policy of the old law was to make men careful in buying titles, the effect of the new statutes, without departing from the wise policy of the old law, is to make men more diligent in keeping up with and asserting their titles. Sedg. and Wait on Trial of Titles to Land, and full citations, section 712. The author in the same section concludes, "that a properly framed improvement or betterment statute is both equitable and constitutional." See also 2 S. W. Rep., 701; 3 S. W. Rep., 746, where such statutes are sustained.

These considerations indicate the view that equity takes of the question; and the opinions of our Supreme Court cited and quoted above imply the need of a modification.

But there are other considerations of policy and expediency which seem to call for some change. In Griswold vs. Briggs. cited above, the Court refers to the condition of titles, surveys and values in a comparatively new country as important elements of the question. In England, where the titles to much of the land were established by uninterrupted descents from father to son through successive generations, and by other scarcely less favorable circumstances, the danger that any third person would come into possession and make improvements under an erroneous belief as to his title, was compartively slight; and hence it was natural that such third person should have but little recognition under the common law, caveat emptor being its doctrine. sudden development from a pathless forest into a wealthy and populous country, alive with new and vast enterprises, has not been a characteristic of England's history. There the titles to land have had every opportunity that time and conservatism could afford, to become fixed and known, and the doctrine of the common law was not unwarranted.

But with us the conditions are vastly different. In Georgia, especially in some parts, the condition of the titles and boundaries is such as to seriously interfere with the sale and improvement of lands. (See a valuable paper on this subject in the Report of the Second Annual Meeting of the Georgia Bar Associa-

tion, page 126). Every abstractor of titles knows, to his sorrow, that a clear and connected land title in Georgia is by no means the rule.

Justices of the Peace, who have ever been prominent in the progress of our civilization and the diffusion of law and order among us, and who set up their oracles in every district, have formulated the descriptions, shaped the habendums and tenendums, and witnessed the signatures of perhaps the greater part of our land deeds. Our legislature has endeavored to meet their abnormal efforts by providing that almost any written instrument, regardless of form, is a deed. See section of Code, 2692. It should now go further and provide some more equitable protection to a bona fide possessor who makes valuable improvements on the faith of these titles. This is due to those who have invested, and is demanded by the interests of the State for the encouragement of those who may wish to invest.

Again, this is the day of material development in the South and in Georgia. Extensive enterprises are undertaken and carried out on every hand. These involve a great outlay of labor and capital in making permanent improvements suitable for their purposes. Under the present law a thrifty and enterprising man who buys land, in itself of low value and producing little or no profits, and who develops it, and establishes on it a mill or factory or other industry from which the whole country derives a great benefit, may be sued out of possession by some lazy, poverty-stricken claimant, and stripped of the fruits of his enterprise without a remedy. With our present loose titles and unaccommodating law, and our wonderful growth in wealth, population and industries, this is a very probable case. It should not be the policy of the State to encourage any such probability.

This discussion of the present law and its deficiencies, and of the demands of equity, policy and expediency, point with greater or less conclusiveness to the need of some modification. In the words of Judge Cooley, in his "Editor's Review" of Blackstone's Commentaries: "Great as have been the changes in the law here chronicled, we may still look forward with reasonable confidence, to others of the like gratifying character, to be introduced by the Anglo-Saxon nations, upon the basis of the common law of England, by the like gradual, but sure and safe steps, and as speedily as the public sentiment may be prepared to receive and perpetuate them."

How the present law should be modified is the last and most difficult question of the discussion. A consideration of other laws passed on this subject might be of interest and profit. The Code Napoleon, which adopted in a large measure, the spirit of the Roman Civil law, declared in section 555, that "where plantations buildings and other works have been made or erected by a third person, with materials belonging to him, the owner of the land has a right either to retain them or to compel such third person to remove them" at his own expense and without indemnity. the owner keeps them he must re-imburse the value of the labor and materials bestowed on them. But if the evicted possessor is bona fide, the owner cannot insist on suppression of the improvements, but must reimburse their value or the augmented value of This law was substantially incorporated into the Code of Louisiana, sections 500 and 501, and fully discussed and sustained in New Orleans vs. Gaines, 15 Wall, 624; see 99 U. S. 513-

Pothier, in his treatise "DuDroit de Propriété," cites Justinian to the effect that an owner cannot recover land until he has reimbursed the bona fide possessor his improvements, and suggests in section 346, that, when the improvements are so considerable that the owner cannot pay for them, the interests of both parties might be subserved by allowing the owner to go into possession, and pay for the improvements by installments, their value to be a lien on the land until paid.

The revised statutes of South Carolina provide, page 559, that a bona fide defendant shall recover the full value of improvements, and that the plaintiff shall have mesne profits only on the land and such improvements as were made by himself or those under whom he claims.

The Kentucky law of 1812, discussed in Green vs. Biddle, 8 Wheat 1, provided that a bona fide defendant should be paid for his improvements, but that the plaintiff might elect to convey the land to the defendant in being paid the value of the land unimproved. If he elects to pay for the improvements, then he is to give bond to pay the same with interest in installments. If he fail to do this, and the improvements exceed in value three-fourths of the land unimproved, then the defendant may have a judgment for his improvements, or may take the estate and give bond to pay the value of the land unimproved. If the improvements exceed the three-fourths valuation, and the plaintiff is unwilling to pay for them, then the defendant is compelled to give

bond to pay the value of the land unimproved with interest, in default of which judgment will go against him for such value, the claimant or plaintiff releasing the land and giving bond to warrant the title. The values are ascertained by commissioners appointed by the court. The defendant is not liable for profits till judgment is rendered against him.

The Code of Virginia provides, 3d Edition, page 964 post, that the defendant shall be liable for five years' mesne profits, but if the improvements exceed in value the five years' profits, then profit may be estimated against defendant for any time prior to five vears during his occupancy, or that of those under whom he claims: but if such profits should exceed the value of the improvements, the defendant is not to be liable for such excess. After thus offsetting profits and improvements, any balance due the defendant shall be a lien on the land till paid. The remaining sections of the chapter are substantially like the Revised Statutes of Massachusetts, and provide that the land without the improvements shall be assessed, that the plaintiff may elect to relinquish the estate to the defendant in payment of such assessed value with interest, and that if defendant fail to pay such sum within the time limited, the court may order the land sold and the proceeds applied to said value and interest, the balance, f any, being paid to defendant. If the proceeds are not enough to pay plaintiff's claim, the defendant shall not be liable for such deficiency.

In a recent case in West Virginia, reported in 5 S. E., Rep. 260, the court allowed the evicted claimant, who was not bona fide, to set-off taxes he had paid on the property, but refused to allow him improvements unless he made it appear that he was a bona fide holder, or that the defendant was guilty of fraud or gross laches in not setting up his title or giving notice of it.

In Alabama the defendant may, under the statute, restrict his liability for profits to one year before the commencement of the suit, and waive his claim for improvements, or may claim the value of his improvements and submit to full liability for rents, provided he is a bona fide holder with three years adverse possession. See 2 So. Rep., 880.

The statute of Michigan provides that after verdict plaintiff may elect to abandon the premises to the defendant, and shall then have a judgment against defendant for the value of land unimproved, which shall be a lien on the land. If the defend-

ant does not pay such judgment the premises shall be sold. If the plaintiff shall not so elect, he shall within a year pay the defendant the assessed value of the improvements with interest, and shall not have possession till he does pay such value, and in default of paying shall be deemed to have abandoned the land, and shall be barred from ever recovering it.

So several of the other States have similar laws for the relief of the bong fide possessor. And it will be observed that in the newer States, where unimproved lands are abundant and cheap, and where the country is rapidly growing and expensive improvements are being made on every hand, that the statutes are much more liberal to the defendant in allowing his claim for improvements. But in relieving one side care should be taken not to go too far in the change. There is but one true title, and the person it vests in has inviolable rights. That title may be vellow with age, and the undisturbed dust of years may have settled over it. but it still lives, and its equity is paramount and undimmed. This is the doctrine of the common law, and is sound and wholesome. But the bona fide possessor, who has been careful and diligent as to his titles, has equities second only to those of the own-The dignity of both of these equities should be properly recognized.

In cases where the improvements equal or are less than the messe profits the present law is full enough. Our Supreme Court having held in 69 Ga., 804, cited above, that a bona fide defendant is entitled to the full value of his improvements, which principle is sustained by other authorities and considerations briefly and imperfectly reviewed in this paper, the following rule is suggested to meet cases where the improvements exceed the plaintiff's demand, as well as other cases where its provisions will apply:

In all cases of ejectment the jury shall pass on the diligence and bona fides of the defendant, on the value of the improvements made by the defendant at the commencement of the action, and whether or not they are movable withoutm aterial injury to them or to the land, on the value of the land as defendant found it, on the value of the mesne profits of the land in that condition, and on the amount of taxes and other expenses necessary to preserve and protect the land as found by defendant, which the defendant has incurred. These facts shall be found only on strict and detailed proof, and in determining the value of the improvements the jury shall consider questions of original cost, enhancement in the

value of the land by reason of them, usefulness to the plaintiff, fitness for the usual and ordinary purposes of the land, permanency and similar circumstances.

If all the parties are found to be bong fide and diligent, then the defendant shall be required to remove his improvements from the land within a time fixed by the court, if the jury shall so determine, provided he shall first pay to plaintiff the value of the meme profits assessed by the jury, less the taxes and the expenses which the jury may allow, which shall be known as net mene profits. If the defendant fails to pay these amounts and remove his improvements within the time fixed, then he shall lose his improvements and the sheriff shall put the plaintiff into possession of the entire estate. If the jury finds that the improvements cannot be removed without material injury to them or to the land. then the defendant shall have a verdict and judgment for the excess in the value of his improvements, as assessed by the jury, over and above the net mesne profits and damages allowed by the jury. and such judgment shall be a lien on the premises superior to all other liens except liens for taxes; provided, always, that the plaintiff shall have thirty days after the adjournment of the court at which the verdict was rendered in which to pay such judgment; and provided further, that if the judgment is not paid and the premises shall be sold under the judgment, then out of the proceeds of such sale the plaintiff's full claim for the value of the land as the defendent found it, and the net mesne profits shall be paid first and out of the balance the defendant's judgment to be paid next. and any remaining surplus to be paid to plaintiff. But plaintiff shall not be further liable if defendant's judgment is not paid in full by the balance of the proceeds after paying plaintiff's claim.

In every case where the plaintiff establishes his title the entire costs, including the final sale and distribution, shall be paid by the defendant.

The following case illustrates the rule: B, the defendant, buys land and erects improvements thereon. A, the plaintiff, recovers against him in ejectment. The jury find that B is diligent and bona fide, assess the value of the land as it was found by B, at \$1,000, the net mesne profits at \$100 per year for ten years, or \$1,000, and the improvements at \$5,000. If B is required by the verdict to remove his improvements, a saw-mill, for instance, and pay the net mesne profits due, and he does so, then the case ends. If he fails to comply with the verdict, and order of the court, the

sheriff puts the plaintiff in possession. If the improvements cannot be removed then B is to have a verdict and judgment for the excess of his improvements over the net mesne profits, or \$4,000. If this judgment is not paid in thirty days after the court adjourns, then the sheriff proceeds to sell the land under the judgment as in other cases, and out of the proceeds, total claim of A's \$2,000 is first paid, then B's claim of \$4,000 is paid if there is enough to pay it, and if not, what remains unpaid is his loss. If the proceeds of the sale should amount to \$7,000, the surplus \$1,000 goes to plaintiff. All costs of the suit, the removal of the improvements, and the sale, will come out of defendant.

It might be suggested that a receiver take the estate and devote the profits to the payment of the claim which could be paid in shortest time, or which the equity of the case demanded should be paid first. This rule might work well where the claim to be paid off is small, but in many cases the expense and delay would be a hardship on all parties, except the receiver. The same objection of delay and uncertainty would seem to attend the plan of permitting one of the parties to go into possession, charged with the payment of the other's claim in installments.

The rule proposed, might, in many cases even, compel the plaintiff to sell his land against his will, but it secures to him the value of his land and the *mesne* profits that, without trouble on his part, have accumulated.

Any seeming hardship it may appear to work against the plaintiff, is further balanced by the more liberal recognition it gives to the equities of the defendant, whose improvements exceed the value of the mesne profits.

No law fits the pecularities of every case; but it is thought that equity, which cannot lead but must follow the law, which seems to demand a new law to lead it on this subject, and which has to conciliate the law and accommodate it to the difficulties of particular cases, will be able to give substantial relief to all parties under the varied and liberal provisions of this rule.

## APPENDIX No. 13.

# SHOULD THE LAW REGARDING IMPROVEMENTS IN EJECTMENT CASES BE MODIFIED? IF SO, HOW?

PRIZE ESSAY BY A. MINIS, JR., SAVANNAH, GA.

(SEE MINUTES.)

This subject, of the rights of a defendant, as to improvements in an ejectment suit, is one which has engaged the attention of jurists, courts, and legislators from an early period, yet it still presents much embarassment and is far from settled. The legislative enactments of the State of Georgia, now controlling this important question, are to be found in sections 2906 and 3468 of our Code.

Section 2906 reads: "Against a claim for mesne profits, the value of improvements, made by one bons fide in possession, under a claim of right, is a proper subject matter of set-off." Section 3468 is as follows: "A trespasser cannot set-off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or improvements which have been made. In that case the jury may take into consideration the improvements or repairs, and diminish the profits by that amount, but not below the sum which the premises would have been worth without such improvements or repairs."

The object of this essay will be to demonstrate that the latter of these two statutes should be expunged from our Code, and that the former, if it should now entitle a bona fide occupant to set off improvements against the mesne profits plus the value of the land, ought to be amended so as to restrict the set-off to the mesne profits alone, and thus be in consonance with the principles of equity embraced by the modern practice of ejectment, and

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that, therefore, the inquiry should be answered: The law regarding improvements in ejectment cases should be modified in two respects, which, broadly stated, are: (1) Against a claim for mesne profits, a bona fide occupant, under a claim of right, should be allowed to set off improvements to the extent of the mesne profits, without recovering the excess of the value of improvements over mesne profits. from the value of the land.

(2.) A trespasser—a mala fide occupant—should not be entitled to mitigate the claim for mesne profits by the value of meliorations.

Before assigning the reasons for this view of the subject, an examination of the common law and equity doctrines, with some decisions of sister States, will create a foundation for those reasons, and will show they are not in conflict with the accepted theory of the law as it now prevails in ejectment suits.

#### COMMON LAW.

It can be asserted as a general proposition of law, that everything affixed to the soil becomes the property of the freehold, even though, to advance and facilitate trade, the courts have sanctioned certain exceptions which have softened the severity of the doctrine.

In the relation of landlord and tenant, the improvements of the tenant pass with the land, on the expiration of the lease, to the owner of the fee, and so the same principle of the common law is discoverable in the subject under discussion.

Common law objects to compensating one who is not the lawful owner of the land, even though he reasonably believe himself to be, for betterments which he has placed thereon. The common law theory being that as the true owner has not given his permission to another, or expressed any willingness to have meliorations made, he cannot be forced to pay for them, even though the expense and labor were incurred by one with entire honesty of intention.

And again, since the freeholder has the right, at any time, to exercise absolute control over the fee, no outside interference can defeat his taking possession of the land and all upon it. In the case of Frear vs. Hardenbergh, Spencer, J., said: "The plaintiff knowingly entered on land not his own, without any authority from the owner, and without the semblance of right. The im-



a 5 Johns (N. Y.), 271, 277.

provements made by him were at his peril; to consider these services meritorious would be to encourage depredation on private property."

Besides, although the improvements might increase the value of the land, they might not be suitable for the purposes to which the owner wished to apply his land. Furthermore, however much the owner of the land might desire to improve it, the betterments being too expensive, he prefers to forego them. To force him to refund the amount spent in such meliorations, the common law would not permit.

"In regard to improvements made on the land while out of the possession of the rightful owner, the general principle of the English law, as well as our own is, that the owner recovers his land in ejectment without being subjected to the condition of paying for improvements, which may have been made upon it by any intruder, or occupant without title. The improvements are considered as annexed to the freehold, and pass with the recovery. Every possessor makes such improvements at his peril, and whether acting on an honest belief in his title or without color of right, the party who is ousted looses all benefits of his expenditures."

The action of ejectment was in the nature of trespass, quare clausum fregit, brought against the defendant, as a trespasser, so it was manifestly inconsistent with the technical form of the action to permit the plaintiff to recover rents and profits for use and occupation, where he, at the same time, insisted that the holding of the defendant was unlawful, and it was not until more liberal and equitable pleadings were introduced into this action, that the set-off of the value of improvements was sanctioned,

In the much quoted case of Jackson vs. Loomis, this is very apparent, for the court, through Savage, C. J., places this indulgence to the defendant, on equitable grounds alone: "There is certainly no reason, in general, why the owner of land should be compelled to pay for improvements, which he neither directed nor desired, as a condition on which he is to regain possession of his property. But when an occupant has taken possession under a bona fide purchase and made permanent improvements, it is very hard for him to lose both lands and improvements."



b Sedgwick on Damages, page 246.

c 4 Cow., 172.

In Putnam vs. Ritchie, Mr. Chancellor Walworth refuses to sanction such a set-off: "I have not, however, been able to find any case either in this country or in England, wherein the Court of Chancery has assumed jurisdiction to give relief to a complainant, who has made improvements upon land, the legal title to which was in the defendant, where there has been neither fraud nor acquiescence on the part of the latter, after he had knowledge of his legal rights. I do not, therefore, feel myself authorized to introduce a new principle into the law of this court, without the sanction of the legislature."

#### CIVIL LAW AND EQUITY.

The civil law appears to have conceived the doctrine of permitting a bona fide occupant to set off meliorations made by him on the land of another, but one, acting in bad faith, was not allowed this benefit. The common law rule operating in many instances harshly, relief was granted by courts of equity and State statutes, such as the "Betterment Acts" of New England. The action for mesne profits is an equitable one to which only equitable defenses could originally be made, and any other but equitable defenses, in this class of pleadings, are innovations.

In the case of Green vs. Biddle, all ameliorations were deducted from the mesne profits, upon equitable principles, and this is now freely done in all courts practicing equity, or in actions established on an equitable basis.

Judge Story's opinions in Bright vs. Boyd are of much consequence, both when the case was before him for the first time, and when he again heard it. "It appears to me, speaking with all deference to other opinions, that the denial of all compensation to such a bona fide purchaser, in such a case, where he has manifestly added to the permanent value of an estate by his meliorations and improvements, without the slightest suspicion of an infirmity in his own title, is contrary to the first principles of equity.

To me it seems manifestly unjust and inequitable to appropriate to one man the property of another who is in no default.

I have ventured to suggest that the claim of the bona fide purchaser, under such circumstances, is founded in equity. I think it founded in the highest equity; and, in this view of the matter, I am supported by the Roman law."



d 6 Paige, 390.

e Sandar's Justinian (Hammond's Ed.), 175.

f 8 Wheat., 77.

g Story's Equity Jur., Sects. 799 and 1237.

<sup>&</sup>amp; 1 Story, 495.

The action for mesne profits embraces so many elements of other actions, as trespass for damages, assumpsit for use and occupation, and a suit for an equitable accounting, it necessarily stands alone as a form of relief, not to be measured by rules which do not govern the component parts of the whole. Now it is treated as an equitable action, and to do equity between the parties, all equitable defenses can be availed of, and upon this idea equity adopted this doctrine, in order to alleviate the hardships of the common law policy, and further, to save two separate actions.

In a very few States, by statute, a bona fide occupant may recover the entire value of his improvements, even though in excess of the mesne profits, and the excess is made a lien on the land. which must be satisfied before the plaintiff can be restored to his absolute rights as the owner of the premises There is a decision by Judge Story, in which he allows the entire value of the improvements. This decision is held by him to be in conformity with the doctrine of equity, independent of statute, and his words are: "I wish, in coming to this conclusion, to be distinctly unperstood as affirming and maintaining this broad doctrine, as a doctrine of equity, that, so far as an innocent purchaser, for a valuable consideration, without notice of any infirmity in his title. has, by his improvements and meliorations added to the permanent value of the estate, he is entitled to full remuneration, and that such increase of value is a lien and charge on the estate, which the absolute owner is bound to discharge, before he is to be restored to his rights in the land.

This is the clear result of Roman law; it has the most persuasive equity, and, I may add, common sense and common justice for its foundation." The Supreme Courts of Tennessee and North Carolina soon followed this decision.

Under a State statute, this has been declared to be the law in Connecticut, in the case of Griswold vs. Bragg, and in that case Judge Shipman dissents from the decision of Judge Story just quoted. "This opinion of Judge Story, though often favorably quoted, cannot be considered as the established law of this country, apart from the statute, because it has rarely had occasion to be reviewed, inasmuch as the "Betterment Acts" have become the predominant statutory system of this country."

1 18 Blatch C. C., 202.

i Johnson ve. Futch, 57 Miss., 80; Jackson ve. Loomis, 4 Cow. 168.
j Bright ve. Boyd, 2 Story, 606.

<sup>1. 4</sup> Humph., 362; 4 Humph., 324; 74 N. C., 608; 84 N. C., 479.

The reasons of Judge Shipman's disapproval of Judge Story's treatment of the principles involved in that case, certainly appear sound, and it does not seem that jurists agree with Judge Story in permitting the entire value of improvements to be recovered where it exceeds the *mesne* profits.

Judge Story would be as severe to the plaintiff, who displayed laches only, as he could be to an owner acting with fraud, one who knows the bona fide occupant is erecting betterments, but. possibly, in the expectation of those meliorations passing with the land, in an ejectment suit, remains silent, looking on at the work being completed on his premises, without announcing his superior title. Should the law be equally generous to both these owners? The one who has displayed only lackes, who is guilty of omission, and the other, who has acted fraudulently to the possessor, who being so indifferent to right and justice, or with corrupt intent, witheld information it was his duty to convey? To the proposition started with, that as against a claim for mesne profits, a bona fide occupant, under a claim of right, should be allowed to set off improvements, to the extent of the mesne profits, without recovering the excess of the value of improvements, over meene profits, from the value of the land, there is one exception, and that is the case just alluded to, of an owner, who gives no notice to a bona fide occupant of his paramount title, even though he know the possessor of the land is placing betterments upon it. Here the occupant in good faith should be entitled to a lien on the land for the satisfaction of his claim for meliorations, and the excess of the value of improvements over the mesne profits should be paid from the sale of the land. But this is not by virtue of any right of the occupant to set off improvements in an ejectment suit, but upon the principle of estoppel. For he who conceals his title, or remains silent while another is building on his land, is ever afterward estopped from asserting his title, without indemnifying the innocent party for his expenditures. And if one having title to an estate, knowingly permit another to purchase the estate, without notice of the outstanding title, the former will be bound by the sale. for, "Qui tacet, consentire videtur; qui potest et debet vetare, jubet, si non vetat."

Mississippi is another State where the law, as pronounced by

m Ante, pages 1 and 2.

n Bright vs. Boyd, 1 Story 478-493.

Story's Equity Jur. Sects. 385, 387, 388, 799 and 1237.

Judge Story, prevails by statute. The policy of equity is to act exequo et bono, and so to hold the occupant liable for mesne profits, but, of course, not for mesne profits never received by him, nor expended in betterments for the soil. Its primary object is to require the defendant to pay the plaintiff the rents and profits, which the land has earned, but in order not to be burdensome, nor oppressive on the defendant, he can mitigate these profits by any meliorations he has made on the land, upon the idea, as already stated, that he is not responsible for profits the benefits of which the land has received. So there is no lucid explanation or sound reasoning, after analyzing this question, in bestowing upon the defendant in an ejectment suit the privilege of extracting from the pockets of the plaintiff the entire value of betterments, or enforcing a lien on the land for its payment.

To give the defendant a lien on the land, for the satisfaction of the excess in the value of the improvements over the mesne profits. is little short of confiscation, and is a complete departure from the reasons which support the present pleadings in an ejectment suit. It is to be remembered that the technical law is, that everything passes with the realty. It was only by the intervention of equity, following in the footsteps of the civil law, that the defendant in ejectment, honest in his intentions, was allowed anything for his improvements, and to extend greater relief to the defendant than this, is a complete departure from equity and justice. The rule of the civil law was, that the bona fide possessor was entitled to be reimbursed from the mesne profits, by way of indemnity, for beneficial and permanent improvements, having due regard for the maxim, nemo debet locupletari ex alterius incommodo, and the law may now be correctly declared to be, in the absence of statutes, that the land is not liable for any excess in the value of improvements over mesne profits."

This is the rule laid down by Tyler on Ejectments.<sup>q</sup> "The defendants should be allowed the value of improvements made in good faith, to the extent of the rents and profits claimed, and this is the view of the subject supported by authorities." New York is an advocate of this view of the subject. And in the case of Wood vs. Wood, Judge Folger uses the following language:

o Abbey vs. Merrick, 27 Miss., 320.

p Sedgwick & Wait on Trial of Title to Land. Sec. 698.

a Sect. 849.

r Wood vs. Wood, 83 N. Y. 575, Bedell vs. Shaw, 59 N. Y. 46.

<sup>83</sup> N. Y. 575.

"At the best, one who puts improvements on the land of another is allowed no more than thereby to mitigate the damages, by off-setting them to the extent of the rents and profits claimed."

#### BONA FIDE OCCUPANT.

It is undoubtedly established by a flood of decisions and opinions of text-writers of reputation, that nothing but a bona fide occupant of land can mitigate the true owner's claim for profits by offsetting the value of improvements; this principle is even established in States which allow the excess in the value of betterments over mesne profits and damages to be a lien on the land. A bona fide possessor is one, who not only supposes himself to be the true owner of the land, but who is ignorant that his title is contested by some other person claiming a better right.

Every possession is presumed to be rightful, and therefore adverse to the title of another claimant." To entitle the defendant to avail of the benefit of the set-off, three things must concur, he must have held under color of title, his possession must have been adverse to the title of the plaintiff, and he must have acted in good faith."

In Texas, the rule is said to be, that, even though the possessor has notice of the adverse title, but still believes his title good, he is acting in good faith and is entitled to his defence of set-off." But Texas law is more favorable to the occupant than most States. though some courts have decided that the constructive notice of an outstanding title, given by the record of a deed, will not deprive a possessor of land from recovering meliorations, if he acted in good faith, under the impression that he was procuring a valid title.\* In the case of Learned vs. Corley, the obiter dictum was: "That the defendant is not a bona fide purchaser of the land in controversy. He neglected to examine the records for sources of The defects, which he would have discovered, would have admonished him of the necessity of further investigation. Neglecting to resort to the register, he is no less chargeable with knowledge than from actual notice." But this opinion was overruled on this point, in the case of Cole vs. Johnston, by Chalmers,

Green vs. Biddle, 8 Wheat. 1.

u Starr ve. Stark, 1 Sawyer, 15-23.

v Start vs. Stark, 1 Sawyer, 25.

w Sedgwick & Waits Trial of Title to Laud, section 695.

z Sedgwick & Waits Trial of Title to Land, section 696.

y 43 Miss., 687.

s 53 Miss., 94.

J.: "And after mature reflection we must announce our dissent from so much of the opinion as holds that the value of improvements is not recoverable, where the defect in the title is discoverable by an examination of the records of the county."

The bona fides of an occupant is here described as follows: "So far as the payment of money is concerned, it seems quite manifest that all that is meant by the requirement of good faith is, that it shall have been genuinely paid, without any knowledge or suspicion of fraud, either on the part of the purchaser, or of the administrator. The term is used in contra-distinction to bad faith. and not in the technical sense in which it is applied to conveyances of title, in which latter sense the party, wholly free from moral mala fides, is still frequently held not to be a bona fide purchaser. . . . Our view is, that in order to deprive the occupant of land, under color of title, of the value of permanent improvements erected thereon, there must be brought home to him either knowledge of an outstanding paramount title, or some circumstances from which the court or jury may fairly infer that he had cause to suspect the invalidity of his own title, but this cannot be inferred merely because it could have been demonstrated by the records of the county." This seems to be the correct exposition of the good faith required, that an occupant should be free from moral bad faith, and if he is, he is holding as a bona fide possessor, even though he should have constructive notice of an adverse superior title. In an Oregon case Judge Deady expounded the law on this point: "Good faith, in relation to the color of a title, must mean nothing more nor less than the party honestly believed his title good, although, upon investigation, it proves otherwise. Of course, in determining whether a party did so believe or not, weight must be given to the particular circumstances of each case. For, although the occupant hold under color of title, yet, if at the same time he know, or have good reason to believe that his title is merely colorable, and confers no right against the legal owner, he is not acting in good faith."

Or, as Mr. Justice Field explained color of title in a California case. "To entitle the defendant to set off the value of his improvements on the land recovered against the plaintiff's claim for damages, his holding of the premises must have been adversely

<sup>&</sup>amp; Starr pe. Stark. 1 Sawyer, 15.

b Field se. Columbet, 4 Sawyer, 529.

to the claim of the plaintiff, under color of title, that a holding in good faith was itself not sufficient, and that, by color of title, was meant the semblance or appearance of title. Wherever any instrument, by apt words of conveyance from grantor to grantee in form, passed what purported to be the title, it gave color of title. If one entered under a deed purporting to transfer the title, although in point of fact the title was never in the grantor." In other words the mere adverse holding of the occupant, under the supposition that he is the owner, is not all the law requires before improvements can be pleaded.

There must be some paper in the nature of a deed, or grant, which has the appearance of being genuine, that does not show under close scrutiny any signs of fraud. And where one thinking he had an estate in fee discovered it was only a life estate, his claim for improvements was upheld.4 Where the ordinary relation of mortgager and mortgagee is acknowledged to exist between the parties, the latter cannot obstruct the right of redemption by claiming the value of improvements, but where the mortgagee made betterments, supposing he was the owner in fee, and the mortgagor asserted no interest in the premises the value of meliorations will be allowed the mortgagee. "He has found himself under the necessity of resorting to a court of equity to enforce his rights. He has thus placed himself within the range of that great principle, that he who seeks equity must himself do equity. The improvements were made in the full belief, that the plaintiff had no right to the property. That belief has, to some extent, been induced by the apparent acquiescence of the plaintiff in the adverse possession of the defendants. . . . . To refuse such compensation, instead of doing equity, would produce the most revolting injustice."

In a Georgia case the court decided that one tenant, in an estate in common, might recover his interest from his co-tenant, who adversely held the whole estate, and whatever equities existed between them, as to improvements made in good faith, under the belief of a good title, were not passed upon by the court, but it said equity would not permit injustice to be done by allowing one

c Beverly & McBride vs. Burke, 9 Ga., 444.

d Plimpton vs. Plimpton, 12 Cushg., 458.

e Mickles vs. Dillaye, 17 N. Y., 93; McSorley vs. LaRissa, 100 Mass., 270; Dows vs. Congdon, 28 N. Y., 132; Hubbell vs. Moulson, 53 N. Y., 225.

tenant in common to get the benefit of improvements made by his co-tenant, under the honest belief that the title was wholly his. Such recovery for meme profits and compensation for improvements, between tenants in common, is sanctioned even in processes for partition, in the State of Massachusetts.

#### IMPROVEMENTS.

An improvement is something which is so placed upon the land. or annexed to the soil, that it becomes a fixture, and cannot be removed without, in contemplation of law, damage to the freehold. To entitle the occupant to decrease the mesne profits by the value of his improvements, the character of the improvements must be such as to increase the value of the premises on which they are erected. "But the thing done to, or upon the land, must also, as the words import, be an improvement to it: it must meliorate. better the condition of the property; it must make it more valuable in the future for the ordinary purposes for which such property is owned and used. Therefore a structure, or labor, may be as permanent in every sense of the word as the pyramid of Cheops. and yet add nothing to the usefulness or the value of the land for ordinary purposes. It does not make the land more beneficial to the true owner, and is not an improvement." And so a fence, in such decay as to be entirely worthless, is not an improvement in the sense under consideration. In Mississippi, ornamental improvements are excluded by statute. So in Massachusetts, only useful improvements, which increase the value of the land, are considered proper to be set off by the defendant.\* The adaptability of the improvements is the test, and this question must, of course, be determined with reference to the peculiar facts of each case.1 In Morris vs. Tinker the defendants endeavored to set-off the value of a wharf, but Judge Bleckley decided that the improvements were for the most part temporary in their nature. were perishable, and the jury could well believe that they had perished, or were likely to perish, before the owner of the premises could reap any benefit from them. Though they cost a con-

f Logan vs. Goodall, 42 Ga., 118

g Backers os. Chapman, 111 Mass., 386; Silloway vs. Brown, 12 Allen, 30.

A Starr vs. Stark, 1 Sawyer 27. Bright vs. Boyd, 1 Story, 494.

i Curtis vs. Gay, 15 Gray 36.

j Gaines ve. Kennedy, 53 Miss. 103.

k Woodward vs. Phillips. 14 Gray, 132 Reed vs. Reed, 10 Pick. 398.

I Sedgwick & Wait. Trial of Title, etc., Sec. 701.

m 60 Georgia, 473.

siderable sum, and for a time enhanced the value of the property, there was good reason for disallowing them as a matter of set-off."

Of course, it is apparent that equity will not be so favorable to one in possession, as against the true owner, as to allow compensation for all expenditures, irrespective of their benefit to the land, that in fact may be incurred merely to indulge a passing fancy of the occupant, without bettering the free-hold, or being of any use to the owner. The very foundation for the equitable relief is in enhancing the value of the property at the occupant's expense, and in Curtis vs. Gay," it was held that taxes paid by the tenant could not be considered an improvement, for which he could recover. Yet it has been maintained that if a bona fide possessor pays out money in removing existing incumbrances, it should be refunded from the mesne profits."

As good faith and ignorance of any adverse claim to title are necessary to permit the defendant's pleading improvements, it is only consistent that he should not be allowed to mitigate the plaintiff's claim for profits and damages, when the meliorations have been made after suit in ejectment has been brought; this is settled law. After suit in ejectment is begun, the plaintiff is no longer guilty of laches in protecting his title and the defendant is upon this notice of this paramount title. In Georgia a bona fide possessor, under color of title, with a warranty from his grantor. who made improvements, is entitled to set off those improvements, so far as they are in excess of the rents due from the grantor. And in the same State the defendant was allowed to set-off the value of the land as increased by the improvement. and was not confined to the actual cost of the betterments." But if a bona fide occupant sets off against profits not only the improvements made by him, but those of the prior possessor, he can be charged with the profits of that prior possessor. The value of meliorations at the time of trial is the proper method of arriving at the amount of set-off.

Where, in Massachusetts, lands had been illegally appropriated for public purposes, by a town, the value of improvements was

n 15 Gray, 36.

o Wylie ve. Brooks, 45 Miss., 54. Bright vs. Boyd, 1 Story, 498.

P Gaines ve. Kennedy, 53 Miss., 103. Russell ve. B.ake, 2 Pick. 505.

q Willingham vs. Long, 47 Ga., 546.

r Thomas vs. Malcome, 39 Ga., 333.

e Gardner ve. Gramiss, 57 Ga., 541.

<sup>&</sup>amp; Griswold ve. Bragg, 18 Blatch., C. C. 202. Withe ve. Myers, 3 Sawyer, 595

not allowed. In another Massachusetts case, the owner of land died leaving a widow and children; ten years later A. married the widow, had children by her, and they lived on the land sixteen years longer. At various times he made improvements, believing his wife to be the owner of the land. After the death of the wife the children brought a writ of entry and it was held that A. was not entitled to the value of the meliorations.

In most of the United States, improvements cannot be pleaded unless mesne profits are claimed.

#### TRESPASSER.

It has been shown that the English or common law ignored any demand made by a defendant in an ejectment suit for the value of meliorations placed by him, in good or bad faith, on the land of the true owner, and that the civil law and equity refused to follow what seemed a too harsh and inequitable treatment of the defendant, but acknowledged his right, when a bona fide occupant, to mitigate the mesne profits by the betterments placed by him on the land.

With the exception of two or three countries as Scotland, Spain and France, and there only to a limited extent, jurists did not attempt to so pervert the principles underlying this equitable defense as to permit a trespasser, or one acting in moral fraud, to reduce the mesne profits by this plea.

Indeed, the very cause for allowing this indulgence at all was the innocence of the one making the expenditures, in ignorance of any adverse claim, free from any notice of a disputed title, and holding himself under color of title. A mala fide possessor, therefore, is deserving of no sympathy at the hands of the law, for losses he may suffer by being deprived of his improvements without compensation. Were one with notice of a paramount outstanding title permitted this plea, not only would it be a departure from the very fundamental principles of the equity doctrine, but it would, besides, be bad policy, as tending to encourage a reckless disregard of the rights of others, since what was originally intended as relief to one displaying honesty of purpose, might be applied by another with corrupt intent to enrich himself at the expense of the property owner. In the United States,

E Spaiding 20. Chelmsford, 117 Mass. 393. Crosby vs. Dracut, 109 Mass. 206.

O'Brien vs. Joyce, 117 Mass. 360.

Leaened vs. Corley, 43 Miss. 687.

few statutes allow a trespasser to set off meliorations; this is only sanctioned to one acting in good faith.

If a man has acted fraudulently, and is conscious of a defect in his title, and with that knowledge expends a sum of money on improvements, he is not entitled to avail himself of it.

Mr. Justice Bradley says: "Was it ever known that a fraudulent purchaser of property, when deprived of his possession, could recover for his repairs or improvements, or for encumbrances lifted by him whilst in possession? If such a case can be found in the books, we have not been referred to it.

"Whatever a man does to benefit an estate, under such circumstances, he does in his own wrong. He cannot get relief by coming into a court of equity."

On this point, now under discussion, probably no case has attracted as much attention and been as often cited as Jackson vs. Ludeling. Here the opinion of the court was delivered by Mr. Justice Bradley, who seems to be the only authority in this country for the assertion that the civil law permitted a mala fide possessor to offset the value of improvements. However this may be in civil law, equity certainly does not accord any such privilege to one occupying in bad faith. Mr. Justice Field dissents in this case as follows: "This court has held after elaborate consideration that they were possessors in bad faith, having obtained control of the road fraudulently. I know of no law and no principle of justice, which would allow them anything for expenditures upon property they wrongfully obtained and wrongfully witheld from the owners, who were constantly calling for restitution. . . . . . . And courts of chancery do not give to an occupant compensation for improvements, unless there are circumstances attending his possession which affect the conscience of the owner, and impose an obligation upon him to pay for them, or to allow for their value against a demand for the use of the property. To a possessor whose title originates in fraud, or is attended with circumstances of circumvention and deception no compensation for improvements is ever allowed."

x Woodhull vs. Rosenthal, 61 N. Y., 382. Wood vs. Wood, 83 N. Y. 575; Tatem vs. McLellan, 56 Miss. 352. Wales vs. Coffin, 100 Mass. 177. Frear vs. Hardenburg, 5 Johns 277.

u 3 Sugden's Vendors, p. 436.

g R. R. Co. vs. Souter, 13 Wall, 517.

a 99 U.S. 537.

tween the improvements of a bona fide and mala fide occupant, he thus expresses himself: "The learned counsel for the appellants who argued this case showed, I think, conclusively by reference to numerous adjudications and approved text-writers, that the civil law, as enforced in Europe and Louisiana, draws the same line of demarcation between the possessor in good faith and the possessor in bad faith in allowing for improvements and expenditures on the property of another." In support of which, he quotes from Pothier, after which he continues: "The civil law as thus stated corresponds with what the great Chancellor of England said of the interference of equity to allow one the value of improvements on another's property. If a person, he said, really entitled to the estate will encourage the possessor of it to expend his money in improvements, or if he will look on and suffer such

penditures, without apprising the party of his intention to dispute his title, and will afterwards endeavor to avail himself of such fraud, the jurisdiction of equity will attach in such a case. But does it follow from thence that if a man has acquired an estate by rank and abominable fraud, and shall afterwards spend his money in improving the estate, that therefore he shall retain it in his hands against the lawful proprietor? If such a rule shall prevail, it will certainly justify a proposition which I once heard stated at the bar of the Court of Chancery, that a common equity of this country was to improve a man out of his estate."

#### GEORGIA DECISIONS.

An inspection of a few Georgia decisions will show the construction put upon sections 2906 and 3468 of the Georgia Code, by the Supreme Court of that State, and will demonstrate the importance of a reconstruction of the State laws.

In the case of Beverly and McBride vs. Burke,<sup>b</sup> it was decided, that a trespasser can set off repairs against profits, if the repairs have increased the profits, but the profits cannot be decreased below the sum which the premises would have been worth without such repairs. This decision calls attention to the clause, in section 3468 of the Georgia Code "a trespasser cannot set off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or improvements which have been made," Now, that part of this statute

<sup>6 9</sup> Ga., 440.

which reads, "except when the value of the premises has been increased by the repairs or improvements which have been made." should be considered superfluous, for even a bona fide occupant cannot reduce the mesne profits by meliorations, unless they are permanent and increase the value of the land, a fortiori, a mala fide possessor cannot. It, therefore, follows from our statutory law. that both occupants in good faith and trespassers, can mitigate mesne profits by the betterments, provided they are permanent and of value to the land, the only difference appearing from the Code, in the positions of the two, is that the latter cannot diminish the profits, "below the sum which the premises would have been worth without such improvements or repairs." The wording of section 2906 of the Code implies that the improvements of a bona fide occupant can be set off only to the extent of the mesne profits, it reads, "against a claim for mesne profits, the value of improvements made by one bona fide in possession, under a claim of right, is a proper subject matter of set off." Do not the initial words. "against a claim for mesne profits," describe the amount or object against which the improvements are to be set-off? It would surely seem so, and this is the view taken of it by the court in the case of Willingham vs. Long.4 McCay J. not only allowed the defendant to set off against mesne profits the value of his own improvements, but also the betterments of the previous possessor, so far as the meliorations of the previous possessor were in excess of the mesne profits charged against him. By this, showing that the previous possessor had not been allowed to charge the excess of the value of his own improvements over the mesne profits, against the value of the land itself. And here, also, the court said, "the sum allowed is not to be so great as to diminish the profits below what the premises would have been worth without the improve-And in Thomas vs. Malcolm, Judge Warner maintains that a bona fide occupant should be permitted to reduce the mesne profits by betterments under the restrictioon of the latter part of section 3468 of the Code, which is, "not below the sum which the premises would have been worth without such improvements or repairs," or in other words, to the extent of the mesne profits and not as against mesne profits and the land, upon the idea that if a trespasser has this privilege, a bona fide possessor should certainly

c Improvements-p-14.

d 47 Ga., 540.

e 39 Ga., 328-333.

have it. In the case of McPhee vs. Guthrie & Co., Judge Warner expressed his opinion as to the rights of a trespasser, but this is merely an obiter dictum, as the claimant was not a trespasser, and it was not an action for mesne profits, but an action to subject the improvements put on the land to the payment of the mortgage debt.

The case of Dean vs. Feeleys is important, even though the question of how far a defendant can avail of his plea of set-off was not before the court, and its references to this point were entirely dicta. Mr. Justice Hall delivered the opinion of the court: "No conditions whatever are annexed to the set-off of one bona fide in possession under a claim of right, who has made improvements, none such, at least, as appears in the last section of the Code above cited, as that the improvements or repairs may diminish the amount of mesne profits only to what the premises would have been worth had not such improvements and repairs been made."

The idea this clearly conveys is that, if a trespasser can set off the value of improvements against the mesne profits, a bona fide occupant should be treated with greater liberality in this respect, and so recover the entire value of improvements, even though they exhaust the mesne profits and encroach upon the value of the premises. This is, in fact, stated in unmistakable language: "A more liberal one (rule) is prescribed for those who are in possession bona fide under a claim of right. Their right to set-off is not fettered by any such limitation; it is unconditional and without qualification; and such occupants, in equity and justice, as well as upon principle, should hold a better position in this respect than mere wrong doers." This obiter dictum goes farther than any decision in Georgia, in its intention of permitting a bona fide possessor to mitigate the mesne profits by the meliorations and granting for the excess a lien on the land. It will be conceded that the same relief should not be given to a mala fide occupant as to one acting in good faith; and that, as sections 2906 and 3468 now exist, the distinction can only be drawn by allowing a bona fide occupant to recover the entire value of the betterments, since a trespasser gets credit for them to the extent of mesne profits.

f 51 Ga., 83-88.

g 69 Ga., 804.

The subject of improvements made by both a bona fide and mala fide occupant. on the land of the true owner, and the extent to which a possessor should be entitled to the value of such improvements, in an ejectment suit, have been traced from the origin in civil law, through the various transitions, to the Code and decisions of Georgia. In the course of examinations of the common law, the civil law, equity and miscellaneous adjudications relative to this question, arguments have been made and views expressed with the object of showing the defects in the two sections. 2906 and 3468 of the Georgia Code, and suggestions have been advanced for the modification of those statutes, that they might not only conform to the spirit of equity, but also mete out justice to all parties litigant. In conclusion, therefore, all lengthy repetitions will be avoided, and merely a brief recapitulation entered into. It has been seen that the common law recognized no policy which severed betterments from the land, but that the owner of the free-hold became the absolute possessor of everything thereon, in the absence of express agreement: that the civil law relaxed the severity of the common law, and permitted a bona fide occupant to reduce a claim for mesne profits by the value of his meliorations; that equity adopted this wisely conceived principle of civil law, and even improved upon it by allowing all equitable defenses against a demand for the land and profits thereof, but did not offer a helping hand to one acting in bad faith by granting him relief, but on the contrary, refused to recognize this claim; that a bona fide possessor was neither in law nor equity permitted to recover the entire value of his betterments. (Judge Story's decision in Bright vs. Boyd, when that case was before him the second time, has not been accepted as the law of this country.) but he could only mitigate mesne profits by their value. that to this rule there is one exception, which prevails by reason of the law of equitable estoppel, not by virtue of the pleadings in an ejectment suit, and that is the case of an owner of the freehold with a full knowledge of his title, concealing that title, or silently witnessing the improvements of another, who he knows has an inferior title, in which case the true owner is estopped from asserting his own title to the detriment of the innocent party, and the latter can claim full compensation for his meliorations; that a few States by statutes have sanctioned the recovery

h 2 Story, 606.

him a lien on the land for the excess of the value of improvements over profits; that still fewer States, by statutes, have allowed trespassers to mitigate damages and profits by their repairs; that a possessor cannot reduce profits by improvements, unless they have been permanent and increased the value of the premises, whether he be acting in good or bad faith. If the dictum in Dean vs. Feeley, which is in opposition to the cases of Willingham vs. Long, and Thomas vs. Malcolm, be a correct construction of section 2906 of the Georgia Code, that a bona fide occupant can recover the entire value of improvements over and above the mesne profits, then that section should be so amended as to plainly confine a defendant to the mesne profits as the extent of his remuneration, for the reasons already given.

Section 8468 of our Code is not only at war with both the civil law and equity, from which our modern ejectment suit has derived its existence, but it is also inharmonious with the very spirit of equity and justice it was intended to advance. arguments can support the proposition that one who has behaved fraudulently, in the eyes of the law, who possibly has displayed moral depravity, in taking possession of that which, at the time, he knew was not his, or which he did not have cause to believe his. shall receive compensation on a plane with another who has been guilty of the same act, but under an honest conviction of ownership? True it can be said that the owner slept on his rights. and was negligent in not looking after his interests, but is this a satisfactory answer? Certainly not, for the owner has only displayed omission in his laches, while the trespasser has, at the best. acted with his eyes open, as to the defective title, and assumed the risk, as he would in any other speculation, of losing his whole investment. Besides there ought to be some distinction, as has been remarked, between the possessor bona fide and mala fide, the latter not being entitled to the consideration shown to one holding land under color of title with ignorance of any flaw in that title. As has been attempted to be shown, in section 3468, the exception, "when the value of the premises has been increased by the repairs or improvements which have been made," does not affect that statute, as improvements to be set-off, in any event.



i 69 Ga., 818.

j 47 Ga., 540-

k 39 Ga., 328-333.

l Pages 20-21.

must not only be permanent, but must increase the value of the premises. So much as to the sections 2906 and 3468 of the Georgia Code. There, however, remains even another method of adiustment as between the owner and occupier of the land in regard to the improvements, as is suggested in several decisions of our Supreme Court." that the land and improvements should be sold together, and whatever sum thereby realized, over and above the value of the land, exclusive of improvements, at the time of the sale, should be paid to the occupant who has erected these improvements in good faith. A close examination will doubtless prove to any one devoting thought to the subject, that this disposition must be good and equitable in some instances, as where one has purchased and improved the land in ignorance of a prior lien or mortgage, and may be better, in the majority of cases, than if the bona fide occupant were allowed to reduce the claim for mesne profits, not encroaching on the value of the land, but be that as it may, certain it is that our statutes should be altered to meet the one or the other of the two methods, and no longer remain in their present form, without sound law or reason to sustain them.

The members of the Georgia bar generally feel a pressing need for an elucidation of, if not a complete change in, the law governing improvements in ejectment suits.

Should this paper succeed in pointing out the defects in the present law, and in presenting suggestions of practical importance to the profession, it will have attained its purpose.

m McPhee vs. Guthrie, 51 Ga., 83; Dean vs. Feeley, 69 Ga., 804.

## APPENDIX No. 14.

# REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Georgia Bar Association:

The Committee on Legal Education and Admission to the Bar deem it necessary to submit a further report in the absence of definite action in relation to their report made in August last.

They have cast said report into the form of a Bill, to be submitted, with the approval of the Association, to the next Legislature of Georgia for action, and they respectfully offer said report, with the Bill annexed, as the report of the Committee for the present year.

George A. Mercer,

P. W. MELDRIM,

A. T. MACINTYRE, JR.,

C. C. KIBBEE,

S. G. McLendon,

Committee.

# REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

SUBMITTED AUGUST 3, 1888.

At the second annual meeting of the American Bar Association, held at Saratoga on the 20th and 21st days of August, 1879, the Committee on Legal Education and Admission to the Bar of that body, submitted an elaborate report, in which they discussed at length the necessity to the legal fraternity of an ample and liberal course of preliminary study, general as well as professional; and they concluded their report with the following resolutions, the adoption of which they recommended:

That the several State and other local Bar Associations be respectfully requested to recommend and further in their respective States, the maintenance by public authority of schools of law provided with faculties of at least four well paid and efficient teachers, whose diploma should, upon being unanimously granted, after a full and fair written examination, be essential as a qualification for practicing law.

That the said State and other local Bar Associations be respectfully requested to recommend and further in such law schools a general course of instruction, to be duly divided, for ordinary purposes, into studies and exercises of the first year, of the second year, and of the third year, including at least the following studies:

- I. Moral and Political Philosophy.
- II. The Elementary and Constitutional Principles of the Municipal Law of England; and herein—
  - 1st. Of the Feudal Law.
  - 2d. The Institutes of the Municipal Law generally.
  - 3d. The Origin and Progress of the Common Law.
  - III. The Law of Real Rights and Real Remedies.
  - IV. The Law of Personal Rights and Personal Remedies.
  - V. The Law of Equity.
  - VI. The Lex Mercatoria.
  - VII. The Law of Crimes and their Punishments.
  - VIII. The Law of Nations.
  - IX. The Admiralty and Maritime Law.
  - X. The Civil or Roman Law.
- XI. The Constitution and Laws of the United States of America, and herein of the jurisdiction and practice of the Courts of the United States.
- XII. Comparative Jurisprudence and the Constitution and Laws of the several States of the Union.
  - XII. Political Economy.

That the said State and other local Bar Associations be respectfully requested to recommend and further in such law schools the requirement of attendance on at least the studies and exercises appointed for said course of three years, as a qualification for examination to be admitted to the bar.

Upon this report the American Bar Association took no action; and your committee are not advised that any State Bar Association has recommended or furthered its suggestions. We do not

feel able to urge them before this body. We admire and applaud the standard of professional attainment erected by this report. We yield to none in our high appreciation of the great benefits to be conferred upon a legal career by a liberal and ample course of preliminary culture; and we recognize the brilliant luster it must impart to all the professional weapons with which the work of conquest, in this cultivated era, is to be achieved.

But your committee, especially in view of the previous course of this Association upon the subject, deem it wise to limit their suggestions and report within the scope of practical attainment.

A brief review of the action of this body may not be inappropriate.

At the first meeting of this Association at Atlanta, on August 14th, 1884, the Committee on Legal Education and Admission to the Bar, through its chairman, the Hon. Joseph B. Cumming, submitted a report, the salient features of which were the requirements of a preliminary course of preparation for, say, three years, before admission to the bar. A thorough and regular examination of the candidate, by written questions and answers, and the appointment by the Supreme Court of a board of four examiners for each Judicial Circuit in the State.

This report, without discussion, was laid upon the table.

At the second annual meeting of the Association, held at Atlanta on the 5th and 6th of August, 1885, this report was brought to its attention, and in connection therewith, Mr. Cumming, the chairman of the committee, submitted the draft of a bill to carry its provisions into effect. A protracted and interesting debate ensued, which developed opposition to the report of the committee and to the bill, and to a bill submitted by Mr. Dessau. Both bills, on motion, were referred back to the committee, which offered, through Mr. Thomas, an amended bill. After further debate the whole matter was laid upon the table. The main opposition to the report and bills seemed to be directed to the provisions requiring a preliminary course of study of thirty months, and the appointment of a board of examiners by the Supreme Court.

At the third annual meeting of this Association, held at Atlanta on the 26th and 27th days of August, 1886, the committee on Legal Education and Admission to the Bar, after referring to the fate of previous reports, recommended only that the examinations of candidates should be in writing, and offered an amendment

to section 394 of the Revised Code to that effect. Without debate the report was received and adopted, and a motion carried that a committee formed to prepare other bills for the Legislature, be charged with framing a bill in accordance with said report. Your committee are not advised whether said resolution has been carried out.

In view of this summary of the previous proceedings of this Association upon the subject referred to by your committee, they do not feel greatly encouraged either to reiterate former suggestions or to advance new ones. But the by-law under which they are constituted charges them with the duty of examining and reporting what changes it is expedient to report in the system and mode of legal education, and of admission to the practice of the profession in the State of Georgia. Having made the examination required, they feel in duty bound to report certain changes in the existing law which they deem expedient, and demanded by the best interests of the profession and the State, leaving to the Association the responsibility of enforcing or rejecting their views.

And first, your committee are of the opinion that no one should be admitted to practice at the bar until he has attained the age of twenty-one years, and shall furnish to the committee of examination satisfactory evidence, that he has enjoyed a preliminary training and experience of at least one year, within a period of three years next preceding his admission, in some approved law school or college, or in the office of some practitioner of recognized standing and ability. Your committee think that a definite portion of practical experience should be a recognized element of qualification for admission, and that no amount of mere book lore can compensate for the lack of that demonstrative ability which can be acquired only in the practical pursuit of the profession. In no other business is the student permitted to prosecute his work until he has first learned to handle his tools. Physicians in Georgia must exhibit a diploma from a regular medical school or college, unless they were practising medicine prior to January 1, 1847; and such diploma is always a certificate of a prescribed period of apprenticeship. Druggists can be licensed to practice their profession only by a board equipped with three year's experience, upon the production of proof of their own practical experience for periods varying from three to ten years. Almost every guild and calling now demands of its votaries a definite preliminary experience. Shall the profession of the law require less? The merest tyro, when admitted to practice, may be called upon to give advice or take action, in reference to life, property or reputation, the result of which may be lasting and irrevocable. He may be suddenly summoned to prepare a will, amidst the agonies of dissolution, the issue of which may involve the comfort and happiness of generations. Equipped only with the learning of the books, and instructed by his private studies alone, without any practical experience or knowledge of professional methods, is he properly equipped to discharge these grave and responsible functions; and should the State launch him upon his professional career until he has at least acquired some practical knowledge of handling the ropes and shifting the sails?

The effect of a serious error committed at the outset of his voyage, is a disaster not only to the recipient of his bad advice or impotent action, but is a burden upon his future progress which clogs his career, and through his error reflects upon the profession which he represents.

Your commistee would gladly recommend a period of apprenticeship exceeding one year, but they fear that such recommendation would not receive the sanction of this body, or the aid of the General Assembly.

Second. Your committee are of the opinion that all applicants for admission to the bar should be examined upon written questions and answers, and they heartily concur in the recommendations of preceding committees upon this point. The advantages of written over oral examinations appear obvious and manifold. In recent years great attention has been paid to this subject by educators, and a general concurrence of opinion has been reached that oral questions and answers should give way to a written test.

In the first place the system of examination is much more thorough and searching. The questions can be deliberately and advisedly prepared by the Board of Examiners at their leisure, and so framed as to cover a large area without retraversing the same ground. Under the present system the oral queries are propounded without previous consultation and arrangement by the board, and present no systematic plan or concurrence of views. They are necssarily hap-hazard in their character, and are prompted by the res gestæ of each particular examination, varying according to the time allowed the pressure of business, and the present disposition and temper of questioner and respondent. No record of

procedure and result is preserved, and nothing is gained towards the formulation of a plan or the improvement of a system. The time during which an oral examination can be conducted in open court is necessarily brief, and subordinate to the business and convenience of the tribunal and its officials. The replies are given at once and evidence the readiness or volubility of the student, rather than the extent or accuracy of his knowledge. As no record is kept, the effect of such replies rapidly dissipates, and they cannot be subject to the calm after-test of critical analysis to which written responses are subject. A glib oral examination may readily deceive, for the moment, even a cautious instructor. In the careful investigation of recorded replies, error of estimate would seem almost impossible. A written examination need not be conducted in open court, or trespass upon the convenience of the public. It can be carried on at any time and place which may be suitable to the board, and can be adjourned from day to day. The present oral examination is completed at a single sitting of the court, and is squeezed into a convenient corper of the day to accommodate the interests of all concerned. At a written examination, the applicants should be sworn to obtain no assistance in answering the questions propounded from companions. books, memoranda, or other sources whatever, and the penalty for false swearing, in addition to that prescribed by the Code, should be the deprivation of a commission, or the annullment of one already granted upon discovery of the fraud. The Board of Examiners should subject the written answers to a careful and deliberate test at their leisure, but within a prescribed period, should establish a grade, which should be uniform throughout the State, and rigidly reject all applicants who failed to attain it. Such applicants could be accorded a future examination at a later day. A written report should be made to the court, and a written record kept of the result of each examination, with any accom-The questions and answers should panying facts worthy of note. be sealed up and filed, subject to examination only at the request of the Board of Examiners then in office, under the order of the Each applicant should be sworn never to divulge any of the questions propounded or the answers made, under the penalties aforesaid.

In the second place, written examinations are more uniform in their character than oral examinations can possibly be. Some of the reasons for this uniformity have already been given. They are free from the haste, uncertainty and variation of oral questions and answers. Under the present plan, it is impossible to establish a settled system of examination. No records are kept, no information diffused and no precedents erected. This important part of a great science can never acquire scientific accuracy or method. A well established system of written questions and answers, with contemporaneous recordation, must provoke inquiry, disseminate information, and gradually diffuse throughout the State a settled and uniform system of legal education and admission to the bar. To substitute plan for accident, stability for uncertainty, and uniformity for variety, must certainly tend to elevate the professional standard.

In the third place, the system of written examinations possesses the great virtue of impartiality. All candidates are tried by the same test, and must stand or fall according to their real merit. The same questions are addressed, and the same facilities accorded to all. If such an examination be honestly conducted i's partial administration is impossible. It is not subject to the haste or excitement of the moment, but its preparation is complete and deliberate, and its consummation fair and unbiased. The student seeks to attain a certain grade, and must rely entirely upon himself. He cannot achieve success by accident or by luck. He must submit to and abide by the same equal test. In the ordinary oral examination, as at present conducted, the examiner or the judge may be weary or pressed for time, varying circumstances may render the questions few and faccile, or prolonged and difficult. The test applied to-day may not be the test applied tomorrow. The modest and diffident student may succumb to the excitement or terror of the moment, and the prize may be awarded to the confidence that cannot be abashed. Every oral examination presents some of the features of a lottery. It is the glory of the system of written examinations that it is divorced from the doctrine of chances.

Third. It is the opinion of your committee that the written examination they have suggested should be conducted by a Board of Examiners, consisting of five members of the bar of good standing and reputation, any three of whom should be empowered to act, appointed bi-ennially for each Judicial District in the State by the Judge of the Superior Courts therein, and who shall continue to discharge the duties of examiners until their successors are duly appointed and qualified. The examinations should be held

semi-annually at stated times and diaces in each judicial District. and continue for such time as may be necessary for the examination of all candidates then applying. Each candidate to deposit with the Clerk of the Superior Court of the county where the examination is held, in addition to the established clerk's fee, ten dollars for the use of said examiners, and to defray their expenses. Should any candidate be rejected five dollars of said deposit shall be returned to him. Your committee feel assured that the usual liberality of the bar is sufficient guaranty that no fee would be exacted of a worthy applicant whose circumstances prevented its payment. Within thirty days after the completion of the examination of any candidate, the Board of Examiners should present a written report to the Judge of the Superior Court, and, if favorable, the clerk should issue the usual certificate after the administration of the oath. The subjects upon which each candidate should be examined, should be those prescribed by the Code of Georgia, including important statutes passed since the last revision, and in all other respects, except as by this report modified, the requirements of the Code should be observed.

Your committee believe that the appointment of an intelligent and reliable Board of Examiners for each Judicial District can be safely entrusted to the Judge of the Superior Courts of said district, and that the members of such boards will be stimulated to an honest and efficient discharge of their duties by a high sense of obligation to their profession, and an earnest desire to elevate its standard. Your committee deem it of the highest importance that the set examinations should be conducted by an established board, who will realize their responsibility, and prepare themselves for the proper performance of their duties.

The present system of oral examinations in open court, however well intended, fails signally in practice. In the debate upon this subject at the second annual meeting, it was openly stated by Mr. Thomas, and not contradicted, that he was informed that in the Augusta Circuit the applicant selects his own committee, and that this was also the case in the Macon Circuit; that he suspected the same was true in Atlanta, and that in his own circuit the judge was obliged to beg the lawyers to act.

Your committee has been advised of a recent instance where the candidate prepared a regular petition addressed to the court, in which he formally nominated all the members of the bar whom he desired to examine him on each particular subject required by

the Code. By the advice of friends this petition was not presented to the court: but its preparation in perfect good faith sufficiently indicates the very loose ideas which prevail upon this subject. We think it may be stated generally, that the committee to examine an applicant is in almost every instance suggested to the court: that its members are friendly to the candidate, and anxious to secure his admission. The examination has come to be looked unon as a merely formal method of bringing a new member to the bar, and the examiners are regarded only as a committee of introduction. Legal examinations, of all others, should be free from fear, favor or affection. We do not think it possible for a shifting body, free from all responsibility, and prejudiced generally in favor of the applicant, to conduct an examination with that thoroughness and rigid impartiality demanded by the best interests of the profession, of society, and of the candidate himself. We are advised of an instance where the chairman of a committee, on the examination of an applicant, reported in open court that the committee were perfectly satisfied, immediately adding sotte voce that the candidate knew nothing in the world about law.

A most unfortunate result of this easy method of admission to the bar, or of the prevailing impression of its simplicity, is that many young men are tempted to experiment with the profession. and enter its wide open portals without serious motive or purpose. After wasting the spring-time of life in its vain pursuit, they discover that they have united themselves to the profession not for better. but for worse, and, sooner or later, they withdraw into other employments. The lamentable result is that all the professions and pursuits are dotted with the wrecks of premature lawyers. The young gentlemen who propose to enter this serious and responsible calling, should not be permitted to regard their examination as a mere matter of form, to be entered upon without apprehension, and to be accomplished without effort. It should be made to appear to them of sufficient consequence to establish a fixed purpose and method of pursuit, and to challenge their earnest zeal and continuous effort. To the facile opportunities for entering the profession may be ascribed many of the more modern practices, which are tending to abridge its dignity and lower the standing of its members, and to substitute in the conduct of causes, the spirit of plunder for the once prevailing high professional temper.

Fourth. Your committee are of the opinion that the licenses

tificate once properly granted, should accord to the recipient all the privileges of the profession, but upon the understanding that it should not become final and conclusive until the lapse of say three years from the date of its issue. At the expiration of that period, the Judge of the Superior Court, upon the certificate of proficiency to be ascertained by examination, and of good conduct and probity, given by the Board of Examiners then in office, should, without further cost to the applicant, grant his warrant of confirmation. For special causes of removal from the bar, as provided in the Code of Georgia, the judge should be authorized, upon complaint of the Board of Examiners, to annul the certificate granted, and to refuse a confirmation. We think that this probate of the professional conduct and capabilities of the young practitioner would exert a salutary restraining influence over those disposed to stray from the path of strict professional rectitude, and could in no manner impede the progress of the capable and upright attorney.

Believing that some reform in professional methods is demanded by the spirit of the age, we have submitted the foregoing suggestions, because we regard them as simple, practicable and attaina-We are aware that no plan can be proposed which will receive unanimous approval, and will readily adjust itself to the views and feelings of all. But one of the high purposes of this Association, as proclaimed in its Constitution, is to uphold the honor of the profession of the law. To accomplish this great end. we feel assured that each member of this Association will consent to shift some favorite position, to modify some cherished idea, and to yield some long harbored prejudice. Should the suggestions of your committee be accepted and enforced, even in a modified form, we believe that a chapter will be opened in reform, to be succeeded in due sequence by other chapters of greater significance when the numbers of the profession shall have multiplied, and their zeal and culture shall be increased. Then will the bar of Georgia occupy as high a plane as that achieved in the enlightened nations of Europe, or in the most advanced of the American States. The eloquent d'Aguesseau has declared that the profession of the law is as ancient as justice, as noble as virtue itself. But it necessarily results that it calls for all the solicitude of government. It concerns too closely the fortune, the honor, and the life itself, of

tice it ought to be held to make proof of their studies, of their capacity, of their good morals, and of their probity.

Respectfully submitted,

GEORGE A. MERCER, Cha'm'n.
P. W. MELDRIM,
CHAS. C. KIBBEE,
A. T. MACINTYRE, JR.

Committee

#### FORM OF BILL.

A Bill to be Entitled An Act to Amend Sections 387 to 403, inclusive, of the Code of 1882, and to Prescribe the Mode of Admitting Attorneys to Practice Law in the Courts of this State, and for other Purposes.

Be it enacted by the General Assembly of the State of Georgia, as follows:

SECTION 1. The following persons, if not specially declared ineligible, are entitled to practice law in the courts of this State:

- 1. Those who have been regularly licensed under the laws of this State before the passage of this Act.
- 2. Those who are hereafter licensed in the manner prescribed by this Act.
- SEC. 2. Those who are admitted to practice in the Superior Courts of this State under the provisions of this Act, may practice in any other court of this State except the Supreme Court, for which another and special license must be obtained.
- Sec. 3. Any male citizen of good moral character, who has attained the age of twenty one years, who possesses the necessary qualifications required by this Act, and has passed the examination as hereinafter prescribed, is entitled to plead and practice law in the courts of this State.
- Sec. 4. Aliens who have been two years resident in this State, and have declared their intention to become citizens pursuant to the Act of Congress, are eligible to admission as attorneys-at-law upon complying with the provisions of this Act.
  - SEC. 5. The applicant for admission to the bar must present to

the Board of Examiners for the judicial district in which he may apply, as hereinafter prescribed, a petition in writing showing:

- 1. His age.
- 2. His citizenship or otherwise.
- 3. That he is of good moral character.
- 4. Satisfactory evidence that he has enjoyed a preliminary training and experience of at least one year within a period of three years next preceding his admission in some approved law school or college, or in the office of some practitioner of recognized standing and ability.
- SEC 6. The evidence of such facts must be by certificate of two attorneys-at-law of such judicial district, or by other proof satisfactory to the Board of Examiners.
- SEC. 7. The applicant for admission to the bar must be examined upon written questions and answers to be prepared and submitted by the Board of Examiners, as prescribed by this Act; provided, nevertheless, that said board shall have the right to require an oral examination in addition to such written questions and answers. The applicant shall be sworn by some member of the Board of Examiners, who are authorized hereby to administer the oath, to obtain no assistance in answering the written questions propounded from companions, books, memoranda, or other sources whatever, and not to divulge any of the questions propounded, or the answers made thereto; and the penalty for a violation of such oath, in addition to that prescribed by the Code of Georgia, shall be the deprivation of a license to practice law, or the annulment by the board of one already granted upon the discovery of the fraud.
- SEC. 8. The written examination of applicants prescribed by this Act shall be conducted by a Board of Examiners in each judicial circuit of this State, to be appointed by the Judge of the Superior Courts in said circuit bi-ennially, to consist of five members of the bar in said circuit, of good standing and reputation, any three of whom may act, and who shall continue to discharge the duties of examiners until their successors are duly appointed and qualified.
- SEC. 9. The judges of said Superior Courts shall appoint said examiners on the first day of January, or within thirty days thereafter, and shall administer to each an oath that he will faithfully and impartially discharge the duties of examiner while he continues to hold said appointment. Said appointments may be

made either in term or vacation for the period of two years, and a record of such appointment and oath must be filed and preserved by the Clerk of the Superior Court of the county of the residence of such appointee.

SEC. 10. The examinations shall be held by said board at least semi-annually, if there be any applicant for admission, at such time and place in the judicial circuit as may be prescribed by the board, and shall continue for such length of time as may be necessary for the proper examination of all candidates then applying. Each candidate must deposit with the Clerk of the Superior Court of the county where the examination is held, the sum of ten dollars for the use of the examiners, and to defray their expenses. Should any candidate be rejected, five dollars of said deposit shall be returned to him.

SEC. 11. The subjects upon which each candidate shall be examined shall be those prescribed by the Code of Georgia, of 1882, including important statutes passed since the last revision. The written questions shall be framed by the Board of Examiners in their sound discretion, and their nature shall not be divulged. The board shall at their convenience, but within a period to be fixed by them, subject the written answers to a careful and deliberate test and establish a grade which every applicant should be required to attain. Any candidate falling below such grade can be re-examined on application at a future sitting of said board. A written record of the result of each examination must be kept by the board with any accompanying facts worthy of note. The questions and answers must be sealed up and filed, subject to examination only by the Board of Examiners then in office.

SEC. 12. Within thirty days after the completion of the examination of any candidate, the board must present a written report of the result to the Judge of the Superior Courts for said circuit. If said Board of Examination report that the applicant has been found duly qualified in all the branches required, the court must direct an order, in term or vacation, that the applicant having been duly examined and found to possess the requisite learning and ability, and having otherwise complied with all the conditions of the law, that, upon taking the oath prescribed, the clerk issue to him, on payment of the fees and costs, a license to plead and practice law in the Superior Courts of this State. This order must be entered upon the records of the court.

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to the laws, as an attorney, counsellor and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia, so help me God. Which oath may be taken in term or vacation, and must be entered on the records of the court.

SEC. 14. Except so far as amended or modified by this Act, admission to the bar in Georgia shall be regulated by the provisions of the Code of Georgia, of 1882, contained in sections 387 to 403, inclusive.

SEC. 15. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

The report of the committee for 1888 is printed and distributed in advance, at the request of the Executive Committee.

GEORGE A. MERCER, Chairman.



# CONSTITUTION AND BY-LAWS.

#### ARTICLE I

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

#### ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided.

#### ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the Committee. Each of these officers shall be elected at each annual meeting for the year next ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

#### ARTICLE IV.

At the meetings of the Association, all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and, in such case, placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those

the Executive Committee shall have full power to admit applicants to become members of this Association.

#### ARTICLE V.

Each member shall pay Five Dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

#### ARTICLE VI.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

#### ARTICLE VII.

The following Committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each:

- 1. On Jurisprudence and Law Reform.
- 2. On Judicial Administration and Remedial Procedure.
- 3. On Legal Education and Admissions to the Bar.
- 4. On Grievances.
- 5. On Memorials.

A majority of the members of any Committee, who may be present at any meeting of such Committee, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

## ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or as may be defined by the By-Laws, except as herein otherwise directed.



#### ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

#### ARTICLE X.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

#### ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.

#### ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.\*

<sup>\*</sup> The charter was duly obtained.. See First Report, page 16.

# BY-LAWS

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The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

TT.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.\*

#### TTT.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall, at all times, be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office, so long as he discharges any of the duties thereof.

#### IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the programme for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the

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<sup>\*</sup> As to the compensation of Secretary, see ante. pp. 33, 45.

<sup>†</sup> As to compensation of Treasurer see ante pp. 33, 45.

protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and to attend to the publication and distribution of the same. They shall have no power to make the Association liable for any debts amounting to more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

#### V.

At each annual, stated, or adjourned meeting of the Association, the Order of Business shall be as follows:

- 1. Reading minutes of preceding meeting.
- 2. Address of the President.
- 3. Report of Treasurer.
- 4. Report of Executive Committee.
- 5. Elections, if any, to membership.
- 6. Reports of other standing committees.
- 7. Reports of special committees.
- 8. Election of officers and appointment of committees.
- 9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

In pursuance of Article IX of the Constitution, there shall be the following standing committees:

- 1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such, as in their opinion, may be entitled to the favorable consideration of the Association.
- 2. A Committee on Judicial Abministration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association, such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge, from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their reports recommend changes in legislation, the Association may appoint, either the same or other committees to bring such matters properly to the attention of the General Assembly.
- 3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose, in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

- 4. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the administration of justice, and to report the same to this Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.
  - 5. A Committee on Memorials, who shall prepare and furnish



to the Secretary brief and appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report.

#### VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.\*

#### IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint, shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanation, the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The

<sup>\*</sup>As to payment of expenses of committees, see Report for 1885-'86, page 70. As to printing committee reports in advance of the annual meetings, see Report of 1886-'87, page 6.



form as near as may be to the provisions of §\$420 and 434 of the Code, inclusive.

#### X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

#### XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor, but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

#### XII.

All annual dues to this Association shall be paid in advance by each member upon his election, and in advance for each year during membership, and any member failing to pay his annual dues in such manner, shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

#### XIII.

These By-Laws may be amended at any stated, adjourned, or annual meeting of the Association by a majority vote of those present.

#### XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon



the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer, that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

#### $\mathbf{x}\mathbf{v}$

The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee, the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during any year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

#### XVI.

No resolution complimentary to any officer or member shall be entertained.

#### XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting; and, if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

#### XVIII.

The Committee on Legal Ethics shall be charged with the duty of reducing to the form of rules or canons, the principles of ethics regulating the relation of lawyers to the courts, the public, their clients and each other; with the further duty of taking such action as they may deem best in case any departures from these principles by members of the bar of the State, come to their notice or are brought to their attention.

# OFFICERS AND COMMITTEES.

1888-89

#### PRESIDENT:

#### MARSHALL J. CLARKE

#### VICE-PRESIDENTS:

First—J. C. C. BLACK, Secoud—A. S. CLAY. Third—C. C. KIBBEE.

Fourth—A. T. MACINTYRE, JR.

#### EXECUTIVE COMMITTEE:

P. W. MELDRIM, A. S. ERWIN. WASHINGTON DESSAU, W. H. FLEMING.

AND THE SECRETARY AND TREASURER ex-officio.

Secretary:

Treasurer:

JOHN W. AKIN.

SAMUEL BARNETT, JR.

# STANDING COMMITTEES OF THE GEORGIA BAR ASSOCIATION FOR 1888-89.

## ON JURISPRUDENCE AND LAW REFORM:

Julius L. Brown, Chairman, Atlanta; W. D. Kiddoo, Cuthbert; M. P. Reese, Washington; Hoke Smith, Atlanta; Pope Barrow, Athens.

ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE:

F. H. Miller, Chairman, Augusta; A. C. King, Atlanta; T. W. Latham, Fairburn; G. N. Lester, Cumming; D. S. Pope, Albany.

Note: For some cause, unexplained by the minutes, only four Vice-Presidents were elected.



Dabney, Rome; W. K. Moore, Dalton; Sylvanus Morris, Athens.

#### ON GRIEVANCES:

Robert Whitfield, Milledgeville; F. H. Colley, Washington; A. R. Jones, Thomasville; J. F. DeLacy, Eastman; J. C. Dell, Sylvania.

#### ON MEMORIALS:

R. L. Berner, Forsyth; F. G. Foster, Madison; H. T. Goetchius, Columbus; C. P. Goodyear, Brunswick; W. G. Johnson, Lexington.

#### ON FEDERAL LEGISLATION:

W. B. Hill, Macon; DuPont Guerry, Macon; J. S. Davidson, Augusta; H. C. Cunningham, Savannah; John I. Hall, Griffin.

# **OFFICERS**

OF

# THE GEORGIA BAR ASSOCIATION FOR PAST TERMS.

# 1883-1884.

#### PRESIDENT.

L. N. WHITTLE,	Macon.
VICE-PRESIDENTS.	
Second—Henry Jackson,  Third—M. H. Blandford,  Fourth—Pope Barrow,  Fifth—George A. Mercer,	Augusta. Atlanta. Columbus. Athens. Savannah. Macon.
1884-1885. ———————————————————————————————————	
W. M. Reese, W	ashington.
VICE-PRESIDENTS.	

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JOSEPH B. CUMMING,								. Augusta.
	CE-I							
First—P. L MYNATT, Second—W. A. LITTLE, Third—J. M. PACE, Fourth—W. H. DABNEY, Fifth—F. G. DUBIGNON, Secretary—W. B. HILL, Treasurer—S. BARNETT, description of the second								Columbus. Covington. Rome.
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	PR	ESID	ENT	٠.				
CLIFFORD ANDERSON,								Macon.
First—N. J. HAMMOND, Second—W. A. LITTLE,								Atlanta. Columbus.
Third—A. S. ERWIN, Fourth—A. H. HANSELL,								Athens.
Fourth—A. H. HANSELL,								Thomasville.
Fifth—J. C. C. BLACK,	•				•			Augusta.
SecretaryW. B. HILL, Treasurer, S. BARNETT, JR	•			•				Macon.
Treasurer, S. BARNETT, JR	•,	٠			٠		•	Atlanta.
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	PRE							10000
WALTER B. HILL,								. Macon.
	E-P							
First—GEO. A. MERCER,					•			Savannah.
Second—Pope Barrow, Third—I. E. Shumate,								Dalton.
Fourth D. D. Horrer	•							. Americus.
Fourth - B. P. Hollis, Fifth—E. N. Broyles,						•		Atlanta.
Secretary I H Lyangery								· Atlanta.
Secretary—J. H. Lumpkin Treasurer - S. Barnett, Ja	,							Atlanta.
I leadurer - D. DARNETT, JI	٠.,				-		•	II UIWII UU.

# ROLL OF MEMBERS.

Adams, S. B.	Savannah.
Akin, J. W	Cartersville.
Alexander, J. H.	Atlanta.
Anderson, Clifford	Macon.
Anderson, C. L	Atlanta.
Arnold, F. A	Macon.
Arnold, Reuben	Atlanta.
Ashley, D. C.	Valdosta.
Bacon, A. O. ·	Macon.
Barnes, Geo. T	Augusta.
Barnett, Samuel	Atlanta
Barrow, Pope	Athens.
Bartlett, C. L	Macon.
Basinger W. S	Dahlonega.
Beckwith, J. F. B	Savannah.
Bell, H. P.	Cumming.
Berner, R. L.	Forsyth.
Bigham, B. H.	LaGrange.
Billups, J. A.	Madison.
Bishop, James, Jr.	Eastman.
Black, J. C. C.	Augusta.
Blandford, M. H.	Columbus.
Bleckley, L. E.	Atlanta.
Boynton, J. S.	Griffin.
Bower, B. B.	Camilla.
	Atlanta.
Brandon, Morris Brown, J. L.	Atlanta.
Broyles, E. N. · · · · · · · · · ·	Atlanta.
Brantley, W. G.	Blackshear.
Bush, I. A.	Camilla.
Butler, E. W.	Madison.
	Atlan <b>ta</b> .
Calhoun, W. L	Atlanta,
Callaway, E. H.	Waynesboro.
· · · · · · · · · · · · · · · · · · ·	Hamilton.
Cameron, H. C.	

Chappell, T. J.	Columbus.
Cheney B. B.	Lumber City.
Cheney, W. T	Rome.
Cheney, W. T	Savannah.
Clarke, M. J.	Atlanta.
Clarke, J. T.	Cuthbert.
Cobb, A. J	Athens.
Colley, F. H.	Washington.
Clarke, J. T. Cobb, A. J. Colley, F. H. Colville, Fulton	Atlanta.
Cooledge, A. F.	
Cotten, J. A	Thomaston.
Cotten, J. A	Atlanta.
Clamant W U	Augusta.
Crovatt, A. J.	Brunswick.
Crawford, C. P.	Milledgeville.
Cumming, J. B.	Augusta.
Crovatt, A. J. Crawford, C. P. Cumming, J. B. Cunningham, H. C.	Sayannah.
Cutts, E. H	
Dabney, W. H.	Rome.
Davidson, J. S.	Augusta.
Davidson, W. T.	Augusta.
Davis, A. H.	Atlanta.
Davidson, J. S. Davidson, W. T. Davis, A. H. Davis, B. M. Dean, L. A.	Macon.
Dean, L. A.	Rome.
Delacy J. F.	rastman.
Dell. J. C.	Sylvania.
Dell, J. C. Denmark, B. A. Denmark, E. P. S. Dessau, Washington Dorsey, R. T. Du Bignon, F. G.	Savannah.
Denmark, E. P. S.	Quitman.
Dessau, Washington	Macon.
Dorsev. R. T.	Atlanta.
DuBignon, F. G.	Savannab.
DuBose, Dudley	Washington.
DuBose, Dudley	Gainesville.
Echols, J. W.	Lexington.
Ellis, W. D.	Atlanta.
Erwin, A. S.	Athens.
Erwin, A. S ,	Macon.
Erwin, R. G.	Savannah.
Estes, A. B., Jr.	
Estes, Claude	
73 11' ( T) 1 (	Savannah.
Falligant, Robert	~~ Talliall.

Felder, T. B., Jr.	<del></del>
Felder, T. B., Jr.  Fite, A. W.	Cartersville.
Fleming, W. H	· Augusta.
Foster, F. G.	· · · Madison.
Foster, F. G	· · · Cartersville.
Ganahl, Joseph · · · · · · · · · · · · · · · · · · ·	· · · Augusta.
Garrard, L. F.	· · · Columbus.
Glenn, J. T.	· · . Atlanta.
Goode, S. W.	Atlanta.
Garrard, L. F. Glenn, J. T. Goode, S. W. Goodyear, C. P. Green, J. W. Gregory, Walter Griggs, J. M. Grimes, T. W. Guerry, DuPont Gustin, Geo. W. Hall, John I. Hamilton, Harper	Brunswick.
Green, J. W.	· · . Atlanta.
Gregory, Walter	· · · Atlanta.
Griggs, J. M.	Dawson.
Grimes, T. W.	Columbus.
Guerry, DuPont	Macon.
Gustin, Geo. W.	Macon.
Hall John I.	Griffin.
Hamilton, Harper	Rome.
Hammond, A. D.	Forsyth.
Hammond, A. D.  Hammond, N. J.	· · Atlanta.
Hammond, T. A. Hammond, W. R. Hammond, W. M. Hansell, A. H.	Atlanta.
Hammond W.R.	. Atlanta.
Hammond W. M.	Thomasville
Hangell A H	Thomasville.
Hansell, A. H.  Harbison, R.  Harley, J. A.  Harrison, Z. D.  Hawkins, E, A.  Haygood. W. A.  Hill, B. H.  Hill, C. D.  Hill, W. H.  Hill, W. B.  Hillyer, George  Hitch, S. W.	Atlanta.
Harley J. A.	· · Sparta.
Harrison Z. D.	Atlanta.
Hawking E. A.	Americus.
Havgood W. A.	· · · Atlanta.
Hill R H	Atlanta.
Hill C D	Atlanta.
Hill W. H.	Greenville.
Hill W. B.	. Macon.
Hillyer George	Atlanta.
Hitch S W	. Blackshear.
Hollis B. P.	. Americus.
Hitch, S. W. Hollis, B. P. Hollman, J. T.	Atlanta.
Holton, J. G.	Baxley.
Hood, Arthur,	Cuthbert.
Hopkins, J. L.	Atlanta.
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Hutchins, N. L.  Jackson, Henry  Atlanta.  Jackson, T. C.  Jackson, W. E.  Jenkins, J. C.  Jenkins, W. F.  Johnson, W. G.  Johnson, Richard  Johnson, Harvey  Lones C. C. Jr  Atlanta.  Lawrenceville.  Atlanta.  Augusta.  Augusta.  Clinton.  Atlanta.  Augusta.
Jackson, Henry Atlanta.
Jackson, T. C Atlanta.
Jackson, W. E Augusta.
Jenkins, J. C Atlanta.
Jenkins W.F Eatonton.
Johnson W. G Lexington.
Johnson Richard Clinton.
Johnson Harvey Atlanta.
Jones C. C. Jr Augusta.
Jones J. J Waynesboro.
Kay W. E Brunswick.
Kibbee C. C Hawkinsville.
Kiddoo W D Cuthbert.
King A C Atlanta.
King Porter Atlanta.
Kingshery S T Quitman.
Lamar J R Augusta.
Lanier R S Macon.
Latham T W Fairburn.
Lawson T G Eatonton.
Lawton A R Sayannah,
Lawton A R Ir Savannah.
Lester R E Savannah.
Levy I. C. Columbus.
Lewis H L Greensboro.
Levy S. Vates Savannah.
Little W A Columbus
Lashrana Glain Atlanta.
Loring C A Atlanta.
Lumphin F K
Lumpkin, E. K Atlanta
Lumpkin, J. H
Montin E W
Martin, E. W
Martin, J. H Hawkinsville
Martin, J. H. Fort Valley
McAlpin, Henry Athens
Johnson, Richard         Clinton.           Johnson, Harvey         Atlanta.           Jones, C. C., Jr.         Augusta.           Jones, J. J.         Waynesboro.           Kay, W. E.         Brunswick.           Kibbee, C. C.         Hawkinsville.           Kiddoo, W. D.         Cuthbert.           King, A C.         Atlanta.           King, Porter         Atlanta.           Kingsbery, S. T.         Quitman.           Lamar, J. R.         Augusta.           Lanier, R. S.         Macon.           Latham, T. W.         Fairburn.           Lawson, T. G.         Eatonton.           Lawton, A. R. Jr.         Savannah.           Levyn, A. R. Jr.         Savannah.           Levy, L. C.         Columbus.           Levy, S. Yates         Savannah.           Little, W. A.         Columbus.           Lochraue, Elgin         Atlanta.           Loring, C. A.         Atlanta.           Lumpkin, E. K.         Atlanta.           Lumpkin, J. H.         Atlanta.           Martin, E. W.         Atlanta.           Martin, J. H.         Hawkinsville           Mathews, H. A.         Fort Valley.           McCalla,
McCana, A. C

McCord, C. Z.														Amanata
McDaniel, H. D.	•		•		•		•		•				•	Augusta. Monroe.
McDaniel, J. C.	•		•		٠		•		•		•			Waycross.
McIntyre, A T., Jr.		•		•		•		•		•		•		Thomasville
McLendon, S. G.		•	•		•		•		•		•		٠	Thomasville
McNeil, J. M.		•		٠		•		•		•		•		Columbus.
McWhorter, H.			•		•		•		•		•		•	Lexington.
Meldrim, P. W.		•		•		•		•		•		•		Savannah.
Mercer, G. A.							•				•		•	Savannah.
Minis, A.		•		•		•		•		•				Savannah.
Miller, F. H.											•			Augusta.
Miller, W. K.										•		•		Augusta.
Milledge, John							•				•			Atlanta.
Mitchell, J. B.		•												Hawkinsville
Mobley, J. M.														Hamilton.
Morris, Sylvanus														Athens.
Mynatt, P. L.														
Neel, J. M.														
Newman, Emile														Savannah.
Newman, J. C.					•									Atlanta.
Newman, W. T.				•								•		Atlanta.
Nisbet, J. T.							•							Macon.
O'Bryan, F. M.				•		•								
Pace, J. M.											•			Covington.
Palmer, H. E. W.										•		•		Atlanta.
Park, J. W.					٠.		•		•		•		•	Green ville
Patterson, R. W.		•		•				•		•		•		
Pate, A. C.		•			•				•.		•		•	Macon.
Payne, J. C		•		•		•				•		•		Hawkinsville
					•				•		•		•	Atlanta.
Peabody, John	•	•		•		•		•		•		•		Columbus.
Peabody, F. D.		•			•		•		•		•		•	Columbus.
Phinizy, Leonard	•			•		٠		•		•		•		Augusta
Pressly, C. P.											•			
Price, W. P.	•			•										Dahlonega.
Proudfit, A		•					•						•	Macon.
Reese, W. M.				•				•		•				Washington.
Reese, M. P.					•									Washington.
Rhett, W. H.						•								Atlanta.
Roney, H. C.														Augusta.
Rosser, L. Z.														Atlanta.
Rountree, D. W.		,			•		•							Quitman.

Kyan, L. C.			•											памкивуш
Russell, J. M.												,		Columbus.
Seidell, Chas, W.														Atlanta.
Sessions, W. M.														Marietta.
Shubrick, E. T.														Washington.
Shumate, I. E.														Dalton.
Smith, Burton								,						Atlanta.
Smith, A. W.														Atlanta.
Smith, C. C.														McVille.
Smith, E. A.									•					Eastman.
Smith, Hoke														Atlanta.
Smith, J. M.			•											Columbus.
Spencer, S. B.								·						Savannah.
Spence, W. N.													•	Albany.
														Hamilton.
Steed, C. P.														Macon.
Stubbs, J. M.										•				Dublin.
Sweat, J. L.							,		•					Homerville.
Stubbs, J. M. Sweat, J. L. Thomas, G. D.								•		•				Athens.
Thomas L. W .							•		•				•	Atlanta.
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Trinna R R														
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Turner H G		•		•		•		•						Quitman.
Turner I S					•		•		•		•		•	Eatonton.
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WOTTH W.C.														Cuthbert.

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- II. The following references to committees were made:
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    - 2. Resolution in reference to Library Fund (pp. 39-41).
  - (b). To Committee on Legal Education and Admission to the Bar.
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# REPORT

OF THE

SEVENTH ANNUAL MEETING .

OF THE

# Seorgia Bar Association,

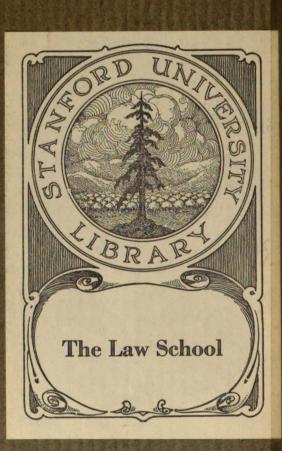
TELD AT

AUGUSTA, GEORGIA.

MAY 15TH AND 16TH, 1890.

Stenographically Reported.

ATLANTA, GA.: JAS. P. HARRISON & CO., PRINTERS (Franklin Publishing House.) 1890.



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# GENERAL MINUTES.

#### FIRST DAY'S PROCEEDINGS.

Augusta, Ga., May 15th, 1890.

The Seventh Annual Session of the Georgia Bar Association met in the Masonic Hall, Augusta, Georgia, May 15th, 1890, 10 A. M., George A. Mercer, President, in the chair, and John W. Akin, Secretary.

The President: Gentlemen, the Bar Association will come to order. The first thing in order is the reading of the minutes of the last meeting. Is the Secretary prepared with his minutes?

Mr. Miller: I move, Mr. President, that be dispensed with. They have been printed and distributed among the members.

Carried.

The President: The next proceeding in order is the address of the President. (See Appendix No. 1.)

The President: The next thing in order, gentlemen, is the report of the Treasurer.

Treasurer Barnett then submitted his report. (See Appendix No. 2.)

The Treasurer then said: If it is in order, Mr. President, I would suggest that these annual payments be made payable one month prior to the annual meeting, as owing to the change in the time of holding the annual meeting the dues for that year are not paid until after the meeting is held, and as the treasury stands now, we are in some danger of needing money before we can draw on the July instalment. We have scarcely enough money in the treasury now to pay for the banquet which we are anticipating having, and also to pay for the printing. If the printing is urged forward we will scarcely have enough in the treasury to pay for it.

will say that in accordance with a resolution passed by the Association several years ago, the Secretary was instructed to erase from the roll the names of all parties who were in arrears as much as four instalments, I believe; and in compliance with that resolution I have omitted the names of quite a number of parties. Those names are submitted at the end here, without specifying the cause of their being dropped. They are enumerated under the more polite description of having resigned or withdrawn. That seemed to be a more acceptable description than that which has been given heretofore.

Now, a few of those members have paid up their dues, and in all cases we simply accepted them. I did not understand it was my duty to pass on the credentials of parties to membership, and whoever paid me, I gave credit for it and reported it.

The balance of cash on hand now is \$479.91; dues of members, \$1,120, making \$1,599.91 total.

This report is respectfully submitted. It has been audited by the Executive Committee, and is approved by them.

On motion, the report of Treasurer Barnett was received.

The President: The next proceeding in order is the report of the Executive Committee, the Honorable F. H. Miller, Chairman.

Mr. Hill: Mr. President, there is an important recommendation which accompanied the Treasurer's report, which should be acted on by the Association. He calls attention to the fact that there is a gap between the time when expenses accrue and the time when dues mature, and suggests that the by-laws be amended so as to make the annual dues payable one month before each annual meeting. I understood his suggestion to be in the nature of a proposition to that effect, and if so, I rise to second it, and to suggest that perhaps now, while the matter is before us, will be the best time to act on it.

Carried.

Treasurer Barnett: Will you permit me one minute? By a resolution of the Executive Committee, I was



directed to send it to Mr. Carlisle. That has been done by him, and the return of the \$50.00 is not to be expected from Mr. Akin, but from Mr. Carlisle.\*

The President: That will not require any action of the Association?

Treasurer Barnett: No, sir.

The President: The next business in order is the report of the Executive Committee.

Mr. Miller, Chairman, then submitted his report. (See Appendix No. 3.)

The report of the Executive Committee was, on motion, received.

The President: The election of new members is next in order.

The following names were then put in nomination:

Walter S. Chisholm, Jr., Savannah.

John T. Jordan, of Hancock.

Mr. Miller: I move, Mr. President, that the rules be suspended, and the Secretary cast the ballot of the Association for the two gentlemen named—the two together.

Carried.

Secretary Akin: Mr. President, I cast the vote of the Association for both of these gentlemen.

The President then announced that both were duly elected members of the Association.

The President: If there are no other names presented for membership, the next in order will be a paper by the Honorable Richard H. Clark, on The Code of Georgia of 1861. (See Appendix No. 12.)

Mr. W. R. Hammond: Mr. President, the paper just read by Judge Clark is so full of interest, not only of a local character but of a general character, that I move the adoption of the following resolution:

'Resolved, That so much of the paper of Judge Richard H. Clark as relates to the origin and history of the Code of Georgia, and the sketch and stee

NOTE.--Mr. Carlisle has since refunded the \$50.00, sent him to pay his expenses in attending to deliver the Annual Address, he having failed to attend.

Association as follows: One copy to the Library of Congress and to each State and incorporated library in the United States. One copy to each Judge of the Supreme, Circuit and District Courts of the United States, and each Judge of every Appellate and Supreme Court of the several States, and one copy to each member of the American Bar Association."

Mr. Fleming: Mr. President, I would like to inquire what is the estimate of the number of copies. The treasury is not very full just at present. Have you any idea at all as to the number of copies it will take?

Mr. Hammond: Not a very large number.

Mr. Peabody: Mr. President, I wish to offer an amendment that a steel engraving of Judge Clark and Judge Irwin be added also.

Mr. Hammond: I accept the amendment offered. I did not know that it was practicable to get a steel engraving for the other gentlemen. I understood that a steel engraving of General Cobb had been prepared.

Mr. Richard H. Clark: I relinquish my right to having it.

Mr. Fleming: I think every one of the Association wants that report printed. The question is whether or not we will be absolutely bankrupt in our treasury. It seems to me we ought to have some idea of the number of copies that it is proposed to publish. The Secretary and Treasurer were complaining at our last meeting of the amount of printing that was done. I think we ought to refer this to a committee.

Mr. Hammond: Mr. President, all that will be necessary will be to take out of the body of the publication that we will make anyhow that portion of the matter that will be made of this subject, and print it in a pamphlet form, which will really cost but little more than the extra paper. I do not think there need be any apprehension in the mind of any member of the Association in passing this resolution.

Mr. Gary: Mr. President, I move that the whole matter be referred to the Executive Committee with power to act

Mr. Hammond: I have no objection to that. I think that will accomplish the same purpose.



mr. Fleming: It is understood to be the Executive Committee for the ensuing year; not the present Executive Committee.

Mr. Gary: It goes over as Executive Committee business. If this committee does not attend to it the next one will

The motion to refer the resolution of Judge Hammond, as amended, to the Executive Committee was then put and carried.

The President: The next business in order is the report of the Committee on Jurisprudence and Law Reform, of which the Honorable H. D. McDaniel is Chairman.

Mr. McDaniel: Mr. President, I have handed the report to the Secretary, which I will now ask him to read to the Association.

The Secretary then read the report. (See Appendix No. 4.)

The President: Gentlemen, you have heard the report of the Committee on Jurisprudence and Law Reform. Does the Association desire to take any action upon it?

Upon motion the report was received.

The President: The next in order of proceedings is a paper by the Hon. Claude Estes.

Secretary Akin: Mr. President, I have received a letter from Mr. Estes forwarding his paper. I presume the duty will devolve upon the Secretary to read it. (See Appendix No. 5.)

The President: The business put down by the Executive Committee for transaction this morning has now been completed, and an adjournment will be in order unless some other business should be brought up.

Mr. W. M. Reese: Mr. President, just one moment. I understand there is not a single member present of the Committee on Grievances, and no report submitted; and I am informed by some members present that there are some matters that deserve attention. I would ask that you appoint a committee for this occasion, during this sitting of the Association—of course not to extend beyond this.

The President: Gentlemen, you have heard the resolu-

tion offered by Judge Reese, that the Chairman appoint a Committee on Grievances for this occasion, inasmuch as there is no one of that committee present.

Adopted.

The President: The Chair will announce it at the next meeting. Is it necessary to do it at once?

Mr. Reese: No, sir.

The President: At the meeting to-morrow morning I will announce it.

The Association then adjourned till to-morrow morning at 10 o'clock.

### FRIDAY MORNING, MAY 16TH., 1890.

The President: Gentlemen, the Association will please come to order. There was a resolution adopted on yesterday at the adjournment that the Chair appoint a Committee to supply the place of the Committee on Grievances, none of whom, I understand, are present. In accordance therewith, I appoint the following gentlemen: Judge W. M. Reese, J. M. Pace, J. C. C. Black and J. R. Lamar.

I had the pleasure, gentlemen, of spending the night with my friend, Col. Charles C. Jones, on the Hill.\* He is very sick indeed. He had a very severe attack of cholera morbus, and is wholly unable to be out. He asked me to express to the Association his regret at not being present. It is a matter of very great regret to him that he cannot be with you to-day. According to the regular order of procedure this morning, the first matter in order will be the report of the Committee on Judicial Administration and Remedial Procedure. Judge Hammond, who is the Chairman of the Committee on Legal Education and Admission to the Bar, is obliged to leave. He requests, if the Convention make no objections, that the order be varied, and that his report be taken up at the present time. If there be no objection, the Committee on Legal Education and Admission to the Bar, the Honorable W. R. Hammond, Chairman, will render its report.

<sup>\*</sup>Note.—"The Hill" is an elevated plateau, about two miles west of Augusta, where are located, in charming diffusion, the elegant homes of cultured and wealthy Augustans.



Mr. Miller: Mr. President, in behalf of the Executive Committee, I would like to ask the admission of two members, Stewart Johnson, Esq., of Glynn, and D. B. Evans, Washington county.

Mr. McCord: I amend that by also adding the name of B. H. Ford, of the Augusta Bar. Is it in order to move the suspension of the rules and authorize the Secretary to cast the ballot? If so, I make that motion.

Carried.

Secretary Akin: Mr. President, I cast the ballot of the Association for all of those gentlemen.

The President: Gentlemen, the gentlemen named have been duly elected members of the Georgia Bar Association. If there is nothing else in order, we will hear the report of the Committee on Legal Education and Admission to the Bar.

Judge Hammond then submitted the report: (See Appendix No. 6.)

Mr. Hill: Mr. President, I move the report be received and adopted.

Mr. Meldrim: Mr. President, before that motion is put, I would call the attention of the Chairman of that committee to this, that it provides for giving thirty days' notice. In what way is that notice to be given? That is left uncertain in the report. Shall it be by advertisement, or how?

Mr. Hammond: That matter was considered, and it was thought best to leave that to the judge and let him give notice in any way that he may see proper. The presumption will be that notice has been given whenever an examination is had.

Mr. Meldrim: They will look at the record and see that no notice has been given as appearing on the record. How would it do to say that thirty days' notice be given in the paper publishing the official notices of the county; or put it in as the judge may see fit. You have left it without anything as a guide.

Mr. Hammond: The simple requirement is that the judge of the superior court shall give thirty days' notice. That makes it obligatory upon him to give the notice, and it leaves it to his discretion. He gives it in any way he may see proper.

Mr. Meldrim: My object is this: Whenever a bill of this kind comes before the Legislature, it is attacked upon all sides, and the very question that I have asked will be asked of the introducer of that bill. The question has been asked whether or not the gentleman has considered the caption of the bill with reference to the body of that Act.

Mr. Hammond: Yes, sir.

Mr. Meldrim: You are satisfied the caption is broad enough to cover the Act?

Mr. Hammond: I think so.

Mr. Meldrim: I move to amend by inserting thirty days' notice, being published in the several official papers of the judical circuit.

Mr. Hammond: One difficulty in doing that (if you will excuse me), will be the expense of it, and there will have to be a provision for expense.

Mr. Meldrim: You have provided in your bill for the payment of all costs and expenses.

Mr. Hammond: That means costs and expenses that now have to be paid by the applicant. One objection to the former bill was, that it provided for an additional cost to be paid by the applicant. It was said that that made the poor young man pay more money than he has to pay now. That was one objection a great many men had who voted against the bill on that account. If it provides for the judge to give the notice, and it does not say how he shall do it, doesn't it necessarily leave it to his discretion as to the manner of the notice?

Mr. Meldrim: There would then not be any uniformity.

Mr. Hammond: I do not think it is necessary to have uniformity. The idea is to let the applicants know about it.

Mr. Meldrim: Mr. President, whenever you get a bill that you can poke objections at in the Legislature, you will be apt to lose it. There would be no objection in putting in the bill that such notice be given as the presiding judge approves or directs.

Mr. Hammond: It would certainly not be an improper amendment to say that such as the judge in his discretion should provide.

expense, notice might be given by the judge at his spring riding. He might give ample notice then; the bill might provide for that.

Mr. Meldrim: I do not care what notice is given, so long as it is fixed.

The President: Do I understand, Mr. Meldrim, you offer that as an amendment?

Mr. Meldrim: I offer that as an amendment, that the judge of each circuit shall, at the spring riding, give due notice of the time and place when it shall be held.

Mr. Hammond: Suppose he wanted to have the examination in the fall, then what of that?

Mr. Meldrim: Give the notice at both terms then.

Mr. Hammond: In some counties of the State we have court ten or eleven months in the year.

Mr. Meldrim: Put it that the judge shall give due notice of the time and place where the examination shall be held.

Mr. Hammond: Mr. President, I think it would be a better amendment, as first suggested, that the judge give such notice as he may deem proper in his discretion at least thirty days before the time. I would favor that amendment; I think the other would involve the bill in unnecessary difficulty.

Mr. Meldrim: My object is to give due notice; I do not care what it is.

Mr. Whitehead: You are putting the duty on the judge to give the notice, without providing how it shall be paid. It would be uncertain who the applicants are, and it would be uncertain as to who should pay for it. You can save all that by having the judge announce at each term of the court when the Commission will meet.

Mr. Meldrim: I think that is a good suggestion, and I will adopt that.

The President: The amendment is that the judge, at each term of the court, will give notice of the time and place when these examinations shall be held.

Mr. Hammond: I have no objection to that.

Mr. Thomas: Mr. President, I would like to ask the Chairman who presented the report a question: That is, whether or not this committee, to be appointed by the judge, is to act in the whole circuit, or simply for a committee to be appointed in each county?

Mr. Hammond: It is for the entire circuit. He shall appoint some place in the circuit where all applicants in the circuit will be examined.

Mr. Thomas: Mr. President, I so understood it, but I was not certain. I desire to give the reasons why I shall vote against the motion of the gentleman from Macon to adopt the report of the committee. As I caught the bill read by the Chairman of the committee, the only change proposed in the present law is the appointment of this committee. which is to act for the circuit and to examine these applicants in vacation, instead of a committee appointed at each court to examine in term, as is now the rule. I think that the scheme of the bill is utterly impracticable. I apprehend it will be agreed by the entire Association that no committee should be appointed for this purpose, except one composed of the best lawyers in the circuit. Now, the best lawyers in the circuit, I suppose, are the busiest lawvers in the circuit, and those lawyers are not going to be willing to go at the time and place appointed on their own expense, and be there a day or two without any interest in this examination, and without any purpose to be accomplished by it, except, perhaps, their interest in the public good. If this proposed bill shall become a law, the result will be that, at the time and place fixed by the judge, the time will have to be fixed months in advance. Take my own circuit, for instance; the judge will have to name the time at the first court in January, the meeting of the committee to be, at the latest, as late as May. When that time comes the committee will not be willing, I apprehend—a majority of them—to come at this time, and to the place appointed for the purpose of examining these applicants. I think that we will get along better to leave the law as it stands, as bad as it is, and let those examinations be held in term in the presence of the judge, because he can then at least get a committee to go through with the perfunctory examinations. The result of this bill is, the applicants will be there: but no committee will be there, and it results in absolutely shutting out nearly all applicants to the bar. Now, that trouble, I apprehend, will not exist in this circuit. It will not exist in the Atlanta and Savannah circuits, and the larger cities in the State, because the appointment will probably be in that city, but in a country circuit which covers perhaps several counties; I have no doubt that experience will show that the scheme proposed in this bill would be incapable of being carried out. For that reason, sir, I oppose the motion to adopt the report of the committee. As I understand this bill, this is the only change which is proposed in the law. The requirements as to the time of study, the course of study to be pursued, are unchanged practically. The real change is to have the committee, of which at least three must act for the whole circuit, to meet at a time and place, notice having been given at the riding, during the spring or fall term. I think it is impracticable, that it will not be carried out, and you had better leave the law where it is unless you can improve on it.

Mr. Hammond: I have to go directly, and I want to say a few words, Mr. President, in reply, if I have the floor.

The President: Yes, sir.

Mr. Hammond: I think my brother is mistaken in his conception of the scope of this bill. It is unfortunate that we did not have the bill printed, or the report printed, so that it could have been examined carefully by the members of this Association; but it does provide for a good deal more than he seems to think it does, and it makes greater changes than he seems to think. For instance, the old law says that he must show that he has read law. This Act says, he must show: "That he has accomplished a thorough course of reading and instruction, and has attained proficiency in the various branches of the law as hereinafter prescribed, under the supervision and direction of some member of the bar of that circuit, of good character and professional standing."

It seems to me, sir-

Mr. Thomas: Will the gentleman permit me to interrupt him?

Mr. Hammond: Yes, sir.

Mr. Thomas: I maintain, sir, that while the language is changed, the effect is the same. There he must show that he has read and fully digested a course of study, etc., and whether he has satisfactorily done it or not is to be found out by the examiner, not by the certificate of any

there is no use of an examination. The studies are the same as those in the Code now, with the exception of the mingling of the law and equity practice under the new Act. There is, in fact, no such thing as an equity practice, as I understand it, and that should be eliminated.

Mr. Hammond: I think that is a very important change in the law. He has been instructed in the law as well as read law himself, under the supervision of an experienced lawyer. I don't stop there. Then he must produce a certificate of that attorney that he has done it. There is very little change in regard to the course of reading and instruction. It is substantially the same as that provided under the present law. Therefore, I will not stop and consider The main difference between this proposed bill and the present law is this; it makes a specialty of the examination and admission of applicants to the bar. It requires the judge to appoint a special committee and a special place for the examination of applicants. As it is now, the examination of applicants is an incidental thing that is never considered a matter of very much importance; rarely ever considered a matter of any importance at all. It is coupled in with other important business of the court, and the judge and lawyers being busy, it is rarely ever the case that sufficient attention is paid to the question of examination of applicants for admission to the bar. Now, this proposed bill provides that the judge shall appoint a special time and a special place for the sitting of this committee of five, any three of whom may act, and that he shall go there, and the committee shall go there, at the time of the examination of the applicants, and that he shall give thirty days' notice, which, of course, puts the committee upon notice as well as the applicants, and gives to the committee an opportunity to prepare for the examination, and gives full notice to the applicant, and he must be ready to submit to the examination at that time. Now, it does seem to me that if we can get this bill passed by the Legislature, that it will be a very considerable advance on the present state of the law. Instead of being incidental, instead of being unimportant, instead of being something that the bar and the court would attach very little importance to, it would be a special occasion and a special time, and there will be a special committee there, with special preparation for the particular work to be done at that time. The main feature to my mind is, that the bill makes a



to the bar.

I think there are other features that ought to commend it to this Association, but I will not take the time to go into detail; but I will say this, that it has received very careful attention at the hands of this committee. It was prepared carefully, and a copy of it sent to every member of this committee, and without a single exception the report as prepared was approved by every member of this committee without the suggestion of an alteration. I think that of itself ought to have some weight in commending it to the Association.

Mr. Alexander R. Jones: Mr. President, there is this feature of that proposed bill as amended which has occurred to me, which, perhaps, has not occurred to the gentleman from Savannah, or from Atlanta. There is not a court in my circuit, for example, that holds thirty days consecutively, and consequently this notice can only be given during the session of court, which would necessarily compel a young man who was seeking admission to the bar to go to another town to be admitted. For instance, if a young man lived in Thomasville, he would be compelled to go to some other town in order to be admitted. That necessarily incurs expense. So far as the appointing of a committee is concerned, I apprehend that the judge of a circuit would find it very hard to find lawyers who would serve. What would be the consideration for a lawyer in Thomasville to go to some other county in the circuit simply to examine an applicant for admission to the bar. That feature of it. it seems to me, is impracticable. You have either got to enforce an expense upon that committee to examine the applicants, or you have to put the expense upon the applicants themselves, and I cannot see why it would not be proper to let the presiding judge appoint a committee in the towns in which the court is in session, which is, as it has been, for an applicant to be examined in his own county. and not require him to go to some other county in the circuit, which would be necessary where the courts in the circuit did not hold thirty days.

Mr. W. T. Davidson: Mr. President, I see many objectionable features, in my mind, about this bill, particularly in the country. My own idea is that the only way that you will ever reach this question of proper qualification of members, is to prescribe a term of study, say not less than two, and probably not longer three years,

may wander through the mysteries of the law and come out at the end of two or three years knowing little, and being little better prepared than they would be in many circuits where they take up law after one court, and are admitted at the next. Still the chances are, I think, that any young man who will stick at the reading of law two or three years is very apt to be much better prepared. It is a notorious fact that in Georgia you can have a young man with a diploma to practice law much sooner than you can make a tinner, or a carpenter, or a mechanic. It seems to me that the law as it now stands, with some amendment prescribing the term of study, is the best and most practicable way of remedying the matter. I have no objections specially to the present bill, except that clause about prescribing a course of study. It should be that he has read law not less than two years, and I move to amend by inserting that clause, "not less than two years."

The President: All in favor of the adoption of the report as amended will say, I. All opposed, no. The noes seem to have it.

Mr. Hammond: A division.

Mr. W. T. Davidson: I do not understand exactly the shape in which the Chairman is putting the question.

The President: The report of the committee has been offered, and an amendment is made that the judge give this notice at any term of the court, and fix the time and place at which these applicants could be examined. This is one amendment. All in favor of the adoption of the report as amended will hold up their right hands until counted.

Secretary Akin: (Counts) 14.

The President: All of the contrary opinion will hold up their right hands until counted.

Secretary Akin: (Counting) 16.

Mr. Meldrim: I move to lay the report on the table.

The President: Gentlemen, it is moved and seconded that the report be laid on the table.

Mr. Hill: Mr. President, there is a great diversity of opinion in our Association as to what change should be



made in the existing laws. There has hardly been a difference of opinion on the point that there ought to be some changes, and I think perhaps that this resolution would meet the views of the Association.

"Resolved, That the Committee on Legal Education and Admission to the Bar be instructed to lay before the next General Assembly the several bills on that subject, which have been offered on that subject; and especially the bill presented at this session of the Association; and that they be requested to urge the passage of a bill which shall raise the standard of legal education and admission to the bar in this State."

It seems to me it would be better to send the committee before the General Assembly, not with a bill already framed, but to send the committee there to lay before the Judiciary Committee the general subject, and urge the passage of such a bill as would be practicable to raise the standard of legal education and admission to the bar.

Mr. Meldrim: I withdraw my motion to lay on the table for the purpose of allowing Mr. Hill to present his resolution. I think that attains the same object in another way.

The President put the resolution just above offered by Mr. Hill, which was carried.

The President: Gentlemen, the next proceeding in order is the report of the Committee on Judicial Administration and Remedial Procedure, the Honorable Logan E. Bleckley, Chairman.

Mr. Bleckley: Mr. President and gentlemen of the Association, the law is stationary in my department. There has not been any progress since the last meeting of the Association. There has been no meeting of the committee of which I am Chairman, and the law, which is always conservative, as you know, is just like it was when I was

appointed to this Chairmanship.

I really think it ought to advance. My opinion is, personally, that the great field for progress in the law is not in principles, not what you would call the substantive department of the law, but in judicial administration. If we could just find out how to give the public the benefit of what law we have, there would seem to be no trouble in the administration of justice. But really how to do this is a problem yet, and perhaps will be until posterity deals with it, and I have no doubt that posterity will solve it. The truth is that much of my dependence for progress is upon posterity. (Laughter.) These young men, of which

them, and I think they will make progress in it. What is the reason, can you tell me, that we should not administer justice on modern principles? Why should not we give people their right? You go out into another department of business, and you find there is progress. Why is it the law remains stationary, not in its principles, because it advances in those, but in its methods? Why is it? Conservatism, which is all well enough in its way, I do not want to discourage, but really there is something to be done, and I am awaiting the arrival of posterity to doit. (Renewed laughter and applause.) I have not much hope in ourselves. Yet, if any gentleman will suggest anything that is practicable in the way of progress I will join him The truth is, I have made some suggestions myself heretofore to the Association which have not been adopted. I do not complain of that, but I just tell you that it is not complimentary to us; indeed, I would say, if I was speaking of ourselves, that it is disgraceful to us that we do not do something to better the condition of things. You want justice administered. Now, that is the object of all There is not anything but justice that is worth a thrip. You know it, and all this finessing and running hither and thither is not worth one cent. What we want is justice administered to the people, and that is what upholds us all. The very virtue and work of law is justice. There is not one thing else appertaining to it that has any value at all. How are you going to get justice? Well, I do not know really what term to describe it by, but it is a kind of finessing, and a game of play of counsel, you understand, and they win sometimes, and sometimes they lose; but all that is wrong. We ought to find out how to come up to the question and shuffle off all that is irrelevant and immaterial and just come to the real issue, the real merits of the case. If you can find that out, how to do that, and will adopt it, you will accomplish something; but all that we have done here does not amount to anything until you strike that, and it never will. You all feel that it is empty and vain, all that we do, unless we advance the administration of justice. Everybody feels so, and the secret of administering justice is to strip off the irrelevant, the immaterial and come down to that which really constitutes the matter of controversy between the parties.

Counsel, client, case, court. Counsel must make it easy for the court. (Laughter.) Now, you may smile at that, but that is the real secret of the administration of justice.

It is for the counsel to make it easy for the court to see where the justice of the case lies. You may try to serve your client, and deal with the case, but the court is a great thing, and if you can just make it easy for the court to see the justice of your position, why, you will have no diffi-

culty in gaining your case.

But now, just think of a court that is struggling to do justice and has not been advised by counsel how to do it. You cannot imagine anybody in any more deplorable situation, and you must find out that the only method of doing this is through proper laws of procedure. That is where the secret lies. You cannot make it easy for the court to administer justice unless you have proper laws of procedure: and if you will address your minds to that, you

will really do more than in any other way.

There is a plenty of law settling substantive principles. It is just now and then on the bench that a new law in this matter of principle presents itself, but constantly you are dealing with administration how you are to get at justice. What is the justice of justice? That is the problem. Now. if you please, find some way to make it easy and practicable for the courts to do what you want them to do. because you all want them to do justice. How shall that be done? We have tried various plans. In the first place, we had strict pleading, and you had to put everything down; and then we tried liberal pleading, and then it was not liberal enough, and you allowed it without limitation. Very well. When you have got it all down, what is next? Why, you have got to have some rule of administration. You are obliged to have it, and that is what I want you to devise, because your work will be unsatisfactory and fruitless unless you adopt some scheme or other to get at the administration of justice. What it is I do not know. My idea heretofore has been to make it expeditious, chief and certain; but there is a great deal of theory in that, you perceive. There is not much development of the practical in those three words, but that is what you want. You want it to be expeditious, you want it to be chief, and you want it to be certain. Now, this committee to which I belong ought to devise some method of doing it, but committees are not very efficient, especially if they do not have a good Chairman.

I put it to you as an Association, as a legal body of gentlemen, what is to be done? Let us do it; let us take one step in our generation now, if you please. I am ready for it, and other young people like myself are ready for it, this matter of the administration of justice. I beg you to do it. I tell you it is for the interest of all of you. There is a great interest at stake. Suppose it destroys all of us, ruins our business and prospects; that is nothing. Let us make a step, and really find out how it is that we ought to try cases in the court, so as to bring our business upon a level with other business of the age. Now how is it? We go on in this same old way; I rather think we get slower instead of more expeditious.

Go to the railroad man, or the merchant, or anybody else in business, and they have modern methods. Why should not we have modern methods, and make business move, and administer justice as a practical thing, and not keep suitors waiting from year to year, and generation to generation, almost, to realize the fruits of their cause.

Now, my young brethren—I see a great many faces that are youthful here—I tell you this is work for you, and if the older ones of us do not do it, take it out of our hands and go on and have the business done. The truth about it is that posterity is the hope of the world, in my opinion. (Laughter.) I want you to take hold of it and advance it, and I am ready to give you my youthful energies in the work, and we will go on, if you say so, and we will try to do this thing better. Everybody knows that it is not done right as we do it.

This is my report, not very formal, but I am in earnest in pressing upon you the objects for which I was appointed, although I have done nothing whatever to advance the

means to accomplish those objects. (Applause.)

The President: Gentlemen, you have heard the report made by Judge Bleckley for the Committee on Judicial Administration and Remedial Procedure. Will you take any action upon it?

Mr. Bleckley: I hope not; I think we had better leave it to posterity, if you please. (Laughter and applause.)

The President: Gentlemen, the next proceeding in order is a paper by the Honorable F. D. Peabody, on the Unanimity Rule in Making Verdicts. (See Appendix No. 7.)

The President: Gentlemen, the next in order is a paper by the Honorable F. H. Miller, on the Dissolution of Corporations by Repeal and Forfeiture. (See Appendix No. 8.)

Mr. Bleckley: Mr. President, I will state to the Asso-

Mr. Miller recommends, and I move that the suggestions of his report be adopted.

Carried.

The President: The next in order, gentlemen, is the report of the Committee on Grievances. The Hon. T. G. Lawson was Chairman of this committee, but as none of the committee were present at this time, a new committee was appointed this morning. I do not know whether that committee has any report to make.

Mr. McCord: Mr. President, will you permit me to stop the progress of the Association for a moment. The report of Mr. Miller, under the adoption of it by the Association. upon motion of Judge Bleckley, means nothing more nor less than the adoption of the report. I desire to go one step further than that, with the consent and approval of this Association. I am not sure to what committee the recommendations ought to be committed. It might be that a bill in the nature of an amendment to that bank section of the Code, allowing the remedies to all these corporations might be made, or in the nature of an original bill in conformity with the admirable views of the author of that paper; but I should like, if it is proper, for the Executive Committee, or the Committee on Jurisprudence and Law Reforms—my friend Mr. Thomas says the Committee on Jurisprudence and Law Reforms—I would like to move a reference of that paper to that committee, looking to bringing it before the Legislature.

Mr. Thomas: Mr. President, I offer an amendment that Mr. Miller be requested to prepare a bill, or bills, embodying the suggestions of his address, and that he hand it to this Committee on Jurisprudence and Law Reform.

Mr. McCord: I accept the amendment.

Mr. Jordan: Mr. President, I offer this amendment: that Mr. Peabody be also requested to do the same; that a bill suggested by his admirable report be also referred to the same committee. I make that as an amendment, to the motion suggested by Mr. McCord.

The President: It is moved, by way of amendment, that the suggestions contained in the paper read by Mr. Peabody this morning be also referred to that committee.

Mr. McCord: I have no objection to that coming up in a separate form, but as that involves a constitutional

and consideration, and so on, I think it would be better to dispose of this subject-matter first; it is not at all akin to the subject-matter by Mr. Miller.

Mr. Jordan: I will withdraw it. If this was a legisla tive body I would see the force of the objections, but as it is only an Association, I cannot. I withdraw it.

The President put the motion of Mr. McCord as amended, which was carried.

Mr. Jordan: Now, Mr. President, I offer my amendment as an original resolution; I move Mr. Peabody do the same, and give it to the same committee.

Secretary Akin: Mr. President, the Constitution, Art. 7, provides for three committees: One on Jurisprudence and Law Reform; one on Judicial Administration and Remedial Procedure, and one on Legal Education and Admission to the Bar; and after assigning some duties to each, provides as follows:

"It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting."

I do not oppose either this resolution, or the one offered by Mr. McCord, and I desired merely to read this for information, to show that these papers, by the Constitution, are already referred to these committees, and it is the duty of these committees to take action and report upon them.

Mr. Thomas: Mr. President, I understand the constitutional requirement read by the gentleman from Cartersville requires these committees, in a general way, to consider these things. The motion of Judge Bleckley and of Col. Jordan, in instructing this committee to do a certain thing, and therefore differing from their general duties, and this resolution offered by Col. Jordan, ought to be passed. I would suggest, however, that it ought to go to the Committee on Judicial Administration and Remedial Procedure; his motion was to refer it to the Committee on Jurisprudence and Law Reform.

Mr. Jordan: I would move to refer it to the proper committee, and I am willing for the Chair to determine that committee.

Secretary Akin: Mr. President, I think one trouble with our Association is that we have the idea of the gentleman



amine these papers in a general sort of way. I think if the committees understood it differently from the way in which it is understood by the gentleman from Athens, and examined them in a particular sort of way, and submitted a particular sort of report at each meeting of the Association, that it would be productive of more good and better subserve the purposes of the Association. I do not wish to be understood as opposing either the gentleman from Sparta (Mr. Jordan), or the gentleman from Augusta (Mr. McCord), but I desire to take this opportunity of calling the attention of the Association and the committees to the particularity with which these committees are charged to consider and investigate addresses, etc.

Mr. Hill: I beg to amend by suggesting the Committee on Judicial Administration.

Mr. Jordan: I accept that.

Carried as amended.

Mr. W. M. Reese: You asked awhile ago for the report of the *pro tempore* Committee on Grievances?

The President: Yes.

Mr. Reese then presented the report. (See Appendix No. 9.)

Mr. Thomas: Mr. President, I move that the report be received, and that consideration of it be postponed until the afternoon\*meeting. I see here, glancing over the programme for this afternoon, that we are not likely to have much business. This resolution may evoke some discussion. I, therefore, move that consideration of it be postponed until afternoon; it will afford business for the afternoon.

A Member: The resolution is simply that this Committee on Grievances for the next year shall look into this thing. It does not decide anything, and it could not do any harm, and being a mere direction for investigation it is hardly likely that it will be opposed.

Mr. Thomas: If that is the case I withdraw my motion.

Mr. Jordan: I move the report be received and adopted by the Association.

Carried.

The President: That, gentlemen, concludes the busi-

Adjourned.

### AFTERNOON SESSION-3:30 O'CLOCK.

The President: Gentlemen, the Association will come to order. The first thing this afternoon is the report of the Committee on Memorial, Hon. R. W. Patterson, Chairman. I do not think that committee is present.

Mr. Hill: Mr. Patterson has sent his report; it is in the possession of the Secretary.

Mr. Fleming: I move we take a recess, Mr. President, for a few moments.

The President: If there is no objection, we will take a recess until some more members come in.

After a short recess the following occurred:

Mr. Hill: Mr. President, if it be in order I would like to submit a suggestion. It is usual to have the nomination of officers suggested to the Association by a committee, and that committee usually retires and considers the matter. It might be a saving of some time if the Chairman would now entertain a motion for the appointment of such a committee and let the gentlemen be considering the matter while we are waiting for the Secretary to come in. Personally, I do not desire to be on the committee.

Mr. John S. Davidson: I second the motion for the appointment of a committee of five, the usual number.

Carried.

The President: I do not suppose the Association desires to lose time. I appoint on that committee Messrs. J. S. Davidson, W. M. Reese, J. M. Pace, J. G. Holton and W. H. Fleming.

(The committee here retired.)

The President: Gentlemen, we might save a little time in calling up the other reports, and if there is no objection I will call the next. The next will be the report of the Committee on Federal Legislation, Hon. Henry G. Turner, Chairman. I do not know if there is any member of that committee present. I know there is a report from the Committee on Interstate Law. I will pass that over for the



present. Also in order will be a report of the Committee on Legal Ethics, Hon. A.O. Bacon, Chairman. I do not know that any of that committee is present. These are all the reports that are called for. In order for this afternoon is the report of the Committee on Interstate Law, the Hon. W. B. Hill, Chairman.

Mr. Hill: I am ready to submit the report. I wish to say, gentlemen, that this report being in print and having been distributed through the hall, it is unnecessary to read it. (See Appendix No. 10.) The most practicable point in it is to be found, I think, on the 6th page, a recommendation relative to the execution of deeds. The sentence quoted there from Mr. Meldrim presents the whole case:

"How few deeds sent out of Georgia for execution are

ever returned properly executed."

I think the difficulties growing out of our law attending the execution of deeds in other States really amounts to an obstruction to the free disposition of property in Georgia, because it is very hard to find a commissioner of deeds, except in the great commercial centers; and frequently parties can not get a judge of a court of record.

Now it would be exceedingly desirable if all the States of the Union would pass a statute substantially similar, by which there could be one method of attesting a deed that would answer in every State, but to bring about such a state of things would require the concurrence of more than forty State Legislatures, and it would be very difficult indeed to bring all the forty Legislatures to act on the subject; and if they could be induced to act, it would probably be very difficult to get them to agree on the same form. So, it seems to me the only remedy for the case is the same remedy which has been adopted in our State in regard to wills, and that is a provision that a deed executed according to the law of the place where it is executed shall be held sufficient in Georgia.

In Florida, some years ago, their requirements for the execution of deeds was similar to that of this State, and they had to abandon it, because, I think, it was found to be a real interference with the free sale of property in the State, and they now have a statute substantially similar to that recommended here, viz., that any deed which is properly executed, according to the law of the domicile of the

party executing it, shall be valid in Florida.

It is hard to find out what the law in many States re-

quires for the execution of a deed. It is very difficult to get sufficient instructions to non-resident clients—such definite instructions as in all cases to secure a proper execution; but we can take a legal directory, or any book that gives the laws of other States, and find out what the other States require, and, therefore, it seems an easier remedy to get the Legislature of Georgia to pass some law of that kind than to get the forty Legislatures to adopt a uniform method for the execution of deeds.

This is really the only matter in the report that I care now to press upon the attention of the Association, and, speaking for the committee, I would be glad for this body to recommend that the Committee on Jurisprudence and Law Reform bring this matter before the next General Assembly, and attempt to secure the passage of an Act which shall provide that a deed, or mortgage, executed in another State, and executed according to the laws of that State, shall be admitted to record in the State of Georgia,

and shall be sufficient to pass the title.

There are other matters of very considerable interest, I think, in the report. For instance, it is undoubtedly true that the laws as to extradition need remedying, and two gentlemen of this city, and Judge Simmons, were representatives of Georgia, at a convention held at Saratoga some years ago, under an invitation from the Governor of New York, in reference to the extradition of criminals. That Act is set out in full in the appendix, and while that Act is to be taken up in Congress, it would be well to have the moral influence of this Association in favor of that legislation. (See Appendix No. 10.)

The President: Gentlemen, you have heard the report submitted by the Committee on Interstate Law, and I understand that the suggestion is that this Association recommend that that portion of the report which provides that deeds and mortgages may, in Georgia, be executed in some other State, executed according to the law of that State, shall be entitled to record in Georgia. Is the Association ready to act upon this report, and upon that suggestion?

Mr. Barnett: Mr. President, it seems to me that that is going a little contrary to what is almost a universally established rule of interstate law, that is, that all laws relative to real property shall be guided entirely by the laws of the State where the real property lies; and I had rather

advocate Mr. Hill's first proposition, that is, that it be attested by two witnesses, one of whom shall be a commercial notary, or some such officer as corresponds to the officer in our State authorized by our law to attest deeds, and then let his attestation be proven by an officer, or by the clerk of a court of record, or whatever tribunal it is that has created it. It strikes me that is more in accordance with the general interstate law. For myself, I have a great deal of practice in that line, and it strikes me as much more consistent with the general rules of interstate law to require the first method than the second that Mr. Hill suggests. For myself, I would much rather have it that way. It strikes me it is much more consistent just to have a notary, or some such officer as is authorized in this State to attest, and then have his attestation witnessed by an officer, or the court that appointed him. I make no suggestion on it, because I am not prepared to do it, but that is the way it strikes me.

Mr. Hill: What Mr. Barnett states has been the recognized rule of real estate, but the Legislature of Georgia has made a very important departure from that principle in regard to wills; and it is now the law of Georgia that a will to real estate, executed according to the law of the domicile, will pass the title, and the necessity of that Act in regard to wills is practically the same necessity as dictates this recommendation in regard to deeds and mortgages.

The President: Unless there is a motion to amend, the recommendation is that it be referred to the Committee on Jurisprudence and Law Reform, and they be requested to bring to the attention of the Legislature such facts as will induce the passage of a bill which provides that a deed or mortgage made in Georgia, to be executed in another State, shall be a good paper for record in Georgia, if executed according to the laws of the other State.

Mr. Gary: Mr. President, would it not be a better idea to to refer it to that committee to perfect the scheme that we wish to present to the Legislature. I understand this to be simply a suggestion to the committee; I do not understand that they have devoted their whole labors to these suggestions. I favor the scope of the resolution, but I am rather inclined to let the committee have a little more latitude. I would suggest that the whole matter be referred to them, and that they be requested to prepare and report such

after proper reflection. That seems to me to cover it.

The President: Do you offer that in the way of an amendment?

Mr. Gary: I did not mean to press it so formally as that, but give it merely as a suggestion to gentlemen more interested than myself.

Mr. Barnett: I will offer as an amendment, that it be referred to the Committee on Jurisprudence and Law Reform generally. It strikes me that there ought, in a good many instances, to be three or four ways, and not one rigid way. I have sent papers to Africa, and others to Mexico. I did not prepare them myself, and they had to be sent back to be re-executed.

Mr. Hill: We accept the amendment.

The President: The resolution will then be that it be referred to the Committee on Jurisprudence and Law Reform, to submit to the Legislature such bill as they think proper to accomplish this purpose.

Carrried as amended.

The President: Mr. Secretary, the Association understands that you have a report of the Committee on Memorials, Honorable R. W. Patterson, Chairman.

Secretary Akin: Yes, sir.

The President: Will you read it?

Secretary Akin: I wish, Mr. President, to apologize for my delay. I keep forgetting that Augusta is half an hour ahead of that part of the world in which I live. (Laughter.)

The Secretary then read report of the Committee on Memorials. (See Appendix No. 11.)

The President: Gentlemen, you have heard the Report of the Committee on Memorials. Does the Association desire to take any action in reference to it?

Mr. John S. Davidson: I move, Mr. President, it be accepted and be published in the proceedings.

Carried.

The President: Mr. Secretary, have we been furnished with any report of the Committee on Federal Legislation?

Secretary Akin: No, sir.



The President: Have you been furnished with any report of the Committee on Legal Ethics?

Secretary Akin: No, sir. Mr. Bacon wrote me that he could not come on account of affairs over which he had no control; that he had referred the matter to the second gentleman on the committee, Mr. Lawton, of Savannah. I have heard nothing at all from him.

The President: The next business in order is the election of officers. Is the committee sent out ready to report?

Mr. John S. Davidson: Mr. President, the Committee on Nominations beg leave to present the following names as

officers of the Association for the ensuing year:

(The following is the report as finally adopted, it having been changed somewhat from the way it was originally presented to the Association, for reasons which will appear in the debate which follows:)

President, F. H. Miller.

1st Vice-President, M. J. Clarke.

2d Vice-President, C. N. Featherston.

3d Vice-President, P. W. Meldrim.

4th Vice-President, M. P. Reese.

5th Vice-President, Geo. D. Thomas.

Secretary, John W. Akin. Treasurer, Z. D. Harrison.

Executive Committee: T. J. Chappell, F. D. Peabody, L. F. Garrard, B. P. Hollis, Dupont Guerry.

Mr. John S. Davidson: Mr. President, in reference to the nomination for Treasurer of the Association, I am instructed by the committee to say that the name of Mr. Z. D. Harrison as Treasurer was nominated by the committee upon positive assurance from our present able Treasurer that he declined further to serve the Association in consequence of his business affairs. That is the report of the committee, sir.

The President: Gentlemen, you have heard the report of the special committee; what is your pleasure?

Secretary Akin: For the last two meetings heretofore the Committee on Nominations have reported only four Vice-Presidents. If I remember this report, there are only four reported. Now, the Constitution requires five, and I took the liberty, in editing the minutes the last time, to note that fact, but it seems to have escaped the attention of the committee again. I would suggest that the commit-

tion, if the committee will accept my suggestion.

Treasurer Barnett: I desire, sincerely, to thank the bar for the honor and confidence they have shown me, and I would gladly serve them again (if they saw fit to elect me), except for the fact that it is almost impossible for me to get off at the season of the year in which I have to come. I have no partner, and it is such a serious drawback to my business that I am almost forced to decline. I desire to thank the Association for the honor conferred so far.

Mr. Peabody: Mr. President, before that report is accepted, I wish to say that I was not aware that the time would be acted upon by the Executive Committee. I have in my hands an invitation from the city council of Columbus, and from the Board of Trade of Columbus, and from the entire Columbus bar to meet there the next time. I will hand it to the Secretary and ask him to read it, and I ask the Association to act upon it. I move to amend the report by striking out the name of Macon and inserting Columbus.

Mr. Chappell: Mr. President, I desire to make the point that this committee was not charged with any such duty, and that, therefore, that portion of their report is not properly before this meeting; and, therefore, I move to strike out that altogether. And, furthermore, I am inclined to think that the Executive Committee have the selection of the place, but inasmuch as this committee was not charged with that duty, I do not think they can report as a committee.

Mr. Fleming: Mr. President, I would like to state the reason reason why the committee made that recommendation. Of course the Constitution gives the Executive Committee that is to be appointed now the power to fix the time and place for the next meeting, but if the members will bear in mind the necessity that exists for a majority of the Executive Committee to be chosen from the place where it meets, they will see the reason for our action.

I was on the nominating committee in Savannah, and when they began to discuss who would be members of the Executive Committee, the question at once arose, Where should we meet? Wherever we meet, we should have a majority of the committee in that place; and the committee in Savannah did as they have done here, they chose a majority of the Executive Committee from the place



which they recommended to the Association as the proper place for the next meeting. That is the reason why we acted upon that; and if we adopt the suggestion of the gentleman and strike out Macon, we will also have to change the selection of the committee.

Mr. John S. Davidson: The committee have added as the fifth Vice-President, George D. Thomas, of Athens. Replying to the suggestion of Mr. Chappell, I desire to say we have followed the precedent, as we understood it, adopted by the Association, and we have reason to believe that if Columbus is not selected for the meeting of the Association for the ensuing year, it is only a pleasure postponed, and it is the desire of a large number of the members of the Association to meet in the city of Columbus, and if the invitation can be extended for twenty-four months, it will, no doubt, at that time, be accepted by a practically unanimous vote of the Association.

Mr. Thomas: I move that the report of the committee be postponed until the place of the next meeting is determined, in order that this committee may select an Executive Committee with a view to the selection of the place. I understand that it is usual to select a majority of the Executive Committee as residents of the place where the meeting is to be held. I would, therefore, move that the nominations be postponed until a place of meeting is selected, and that the Association select a place.

Mr. Hill: Mr. President, allow me to speak on that motion, please. Hitherto the Association has never, I believe, selected for itself its place of meeting. There is a very good reason why, perhaps, it ought to be left to the Executive Committee. Circumstances might occur in the succeeding spring or summer that would make the place of meeting that had been selected inappropriate, and we have acted on the policy of leaving that matter to the discretion of the Executive Committee. It is true that to a certain extent the Association has had in mind a place of meeting, and that has to some extent dictated the members of the Executive Committee. I ought to say that I am suffering from a very bad headache, and I feel hardly able to express myself intelligently. I make that apology for my failure to be understood, if it be a failure.

We have now met for two years at cities that are, so to speak, on one side of the State. I think it would be just to hold the next meeting at a more central place. I have pledged my Brother Chappell and my Brother Peabody, if

they will make no fight against Macon, that I would help them for Columbus next year. I think Macon the more appropriate place. I have an invitation tendered to the Association by the bar of Macon. Our prominent bodies there have not acted for the sole reason, I suppose, that they thought the invitation of the bar would be the principal thing, and I do hope that the committee will allow the action of the nominating committee to go through.

The President: The first amendment in order to be acted upon by the Association is that the selection of officers be postponed until it is determined at what place the next meeting shall be held. Are you ready to act upon that amendment?

Mr. Fleming: I will state that we would have to change the by-laws before we positively determine where to meet. The by-laws say the Executive Committee shall fix it. I would make that statement as preliminary to voting.

Several voices: Change the by-laws.

Mr. W. M. Reese: Mr. President, it seems to be a settled matter that the Executive Committee absolutely controls this question. The Association cannot do anything with it. It is making them vote upon a matter that they have nothing to do with. I move that so much of this report as refers to the place be stricken out, and leave the thing where the Constitution leaves it.

Mr. Thomas: I rise to a point of order. A motion to postpone consideration takes precedence of a motion to amend. My motion is to postpone the report of the committee for a time. That would take precedence of the motion of Judge Reese to amend.

The President: I understand, gentlemen, that the motion offered was that the Association simply postpone the time of acting upon the selection of officers. I think that is in order. It is a different question entirely from whether they have the right to select the place of meeting; so I put that amendment. All in favor of postponing the election of officers for the present will say, Aye. All opposed, No. The noes seem to have it.

A division was then called for, which resulted in ayes 15, noes 10.

The President: Then, gentlemen, the amendment prevails and the selection of officers will be postponed for the present.

Mr. Peabody: Now, Mr. President, in behalf of the citizens of Columbus, the bar of Columbus, and the city council of Columbus, we respectfully and earnestly invite the Georgia Bar Association to hold its next annual meeting in Columbus.

Mr. Wright: Mr. President, I move that we select as our next place of meeting the city of Columbus. I will put it in this shape: I move that we recommend to the Executive Committee that they select the city of Columbus as the place for the next meeting.

Mr. John S. Davidson: Mr. President, I call the attention of the Association to the 15th subdivision of the bylaws:

"The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee and by the Directors of the Executive Committee; the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days."

Mr. Wright: That is conformity with the motion I made. I move that we request the Executive Committee to select that place—to accept the invitation of Columbus.

The President: I do not think the Association can do anything more than to make a suggestion to the Executive Committee. Under the present by-laws, they have the absolute right to select the time and place of meeting. I think the Association can recommend any place.

Mr. Wright: That is the purport of my motion; that we request them, or recommend, or whatever the Chair chooses to put.

Mr. John S. Davidson: I move to amend the resolution by substituting Macon in place of Columbus.

The President: Gentlemen, the second amendment is first in order.

Mr. Thomas: Mr. President, just one word. I think the interest that the bar of a given city displays in this Association ought to affect, in a large measure, our vote. The bar of the city of Macon is represented here at this meeting by but one member.

A voice: He is a host, though.

Mr. Thomas: The city of Columbus, twice as far off, is represented by twice as many members. (Applause.) Of course, I do not count Mr. Chairman, our able and distinguished member of the Supreme Court, because he is tem-

porarily a member of the bar of Macon; but he is a member of the bar of the State of Georgia, and we claim him as much a representative of Athens, Augusta and Savannah, as he is of Macon. There being two representatives here from the city of Columbus, which is twice as far off as Macon, and only one from the city of Macon, I think that that, aside from other matters, and supposing that the transactions of the two cities are equal,—I think that that alone should turn the scales in favor of Columbus, and I hope that the motion of the distinguished member from Augusta to amend this resolution will be voted down.

Mr. Peabody: Before the vote I would request the Secretary to read the invitation from the City Council of Columbus, and the invitation from the entire bar, and the invitation from the Board of Trade.

The President: Gentlemen, the motion now is, on the amendment of Mr. Davidson, that Macon be recommended to the Executive Committee as the place for the next meeting.

Mr. President, on that amendment allow me to Mr. Hill: state that mere physical numbers ought not to count. This Association should recollect that on yesterday there was furnished a paper by Mr. Claude Estes, and on to-day a paper by Mr. Patterson; so I am entitled to count both of these gentlemen as active friends and workers of this Association, and I am able to state from personal knowledge that these gentlemen, and other gentlemen from the Macon bar, confidently expected to be present, tried to be present, and obtained leaves of absence from the judge of the superior court that they might be present, but business engagements, that I am satisfied were in good faith and imperative, prevented; so it cannot be said that there is any lack of interest in the Macon bar in holding the next meeting in our city.

Mr. Chappell: Mr. President, in so far as the Macon bar being represented here in the spirit rather than the flesh, I desire to say that Columbus is also probably more numerously represented even in spirit; therefore, we ask that the voice of the message of the Columbus bar and city council and the Board of Trade of this city be now read.

Mr. Meldrm: Do I understand the gentleman to say that the Macon bar is represented herein spirit?

Mr. Chappell: That is what the gentleman from Macon says.

Mr. Meldrim: I only wanted to know. (Laughter.)

The President: All those who are in favor of recommending Macon as the place for the next meeting will say, Aye. All those of the contrary opinion, No. The Chair cannot decide. All those in favor of Macon will hold up their right hands until counted.

Secretary Akin: Ten.

The President: All those in favor of Columbus, will hold up their right hands until counted.

Secretary Akin: Eighteen.

The President: The recommendation, then, gentlemen, is in favor of Columbus.

Mr. Hill: Mr. President, I move that the Committee on Nominations be authorized to reconsider their nominations of the Executive Committee, because we all recognize that this decision, to which I acquiesce reluctantly, will render proper a reconsideration of their nominations of an Executive Committee.

The President: Gentlemen, have you any objections to the Committee on Nominations remodelling their report so as to change the Executive Committee?

Secretary Akin: Mr. President, I move to amend that motion by requesting the nominating committee to retain as Chairman of the Executive Committee the Hon. W. B. Hill.

So far as making local arrangements are concerned, the other three members of the Executive Committee can be appointed from the city of Columbus, and they can make all local arrangements; and, if Mr. Hill will excuse my saying so in his presence, anybody who knows about the workings of the Association knows how much the Association is indebted to him, and I have no doubt that the chairmanship of the Executive Committee being invested in him would enure greatly to our benefit; and I am very anxious that he retain the chairmanship of that committee.

Mr. Chappell: I desire to add, myself, although the Association has very kindly recommended Columbus as the place of holding the next meeting, yet, at the same

know that his chairmanship will add to the benefit and success of the Association.

The President: I think that should be left to the committee.

Mr. Thomas: I would like to make a motion that our meetings should be limited to one day. Not that I would not be willing and anxious to stay two or three days. I always go; and I always enjoy the meetings. I think if we limit it to one day, our attendance will be larger. My idea is to have essays, etc., during the day; and in the afternoon, and let the orator of the occasion make his speech at the banquet; and then we would go home.

Mr. Meldrim: Will the gentleman allow me to interrupt him to ask if he insists on going home before the banquet or afterwards. (Laughter.)

Mr. Thomas: The next day.

Mr. Meldrim: I think some of our friends should be allowed an interval between the banquet and the time for going home.

Mr. Thomas: I allowed an interval from that, and if my friend had noticed my language, he would have seen it. Let the orator of the occasion make his address at the banquet that night, and wind up at 12 o'clock, or at any other hour in the night—

A voice: Before or after the banquet?

Mr. Thomas: That would be a matter of choice. Some orators prefer before and some after. I offer it as a motion that the meeting be limited to one day instead of two. I move to refer it to the Executive Committee, and let them bear it in mind.

Secretary Akin: I make the point on that, that the Constitution has already referred all such questions to the Executive Committee.

The President: I think the point is well taken, and that it is not a matter for the Association to pass upon.

Mr. Thomas: I move that it is the sense of the Association that the meeting should be limited to one day.

The President: Gentlemen, the Constitution provides as follows:



"This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present"

Is your motion that the Constitution be amended in that respect?

Mr. Thomas: No, sir, not at all. Simply that is the sense of the body. Let it be left with the Executive Committee, as the Constitution leaves it.

Mr. Wright: I move to lay that motion on the table.

Secretary Akin: Mr. President, Mr. McCord, of Richmond offers the following resolution:

"Whereas, At the ninth annual meeting of the American Bar Association, on the motion of the Hon. Geo. Hoadley, a resolution was adopted favoring a rule of court by which counsel in appellate courts are required to exchange briefs in advance of the argument;

"Resolved, That the matter be referred to the Committee on Judicial Administration, and that they be requested to report thereon at the next

meeting.'

The President: I understand the other resolution had no second.

Mr. Meldrim: For the purpose of allowing it to be laid on the table I second Mr. Thomas' motion.

The President: Then the resolution has been seconded, and is in order. The resolution is that hereafter the meetings of the Association be limited to one day.

Mr. John S. Davidson: I move to lay the resolution on the table.

Mr. Thomas: I beg leave to withdraw my resolution.

The President: Gentlemen, the only motion before the meeting is the one just read by the Secretary. All in favor of the resolution just read by the Secretary in reference to exchanging briefs, will say, Aye. All opposed say, No. The ayes have it, and the resolution is adopted.

Mr. W. T. Davidson: Mr. President, while they are waiting, I bring to the attention of the Association in the nature of a suggestion to the supreme court, that they would after this session so change the days of sitting as to either sit three days consecutively, or one week consecutively. To lawyers living at a distance it is quite a burden to go to Atlanta and then stay over, and then probably get in the midst of a case and stay over another day. If the supreme court could consistently do so, I think it would be a great convenience to the bar (if it would

week, and then adjourn over, and I make the motion that the supreme court be requested to give that their consideration by the next term.

The President: You present it in the alternative, either the first three days of the week, or the whole week.

Mr. W. T. Davidson: Yes, sir.

Mr. Wright: I move as amendment to that, that we recommend to the court and their views, that they sit until one session has been concluded, and after that give such time as may be necessary, and in that way the members of the bar of one circuit can attend court and get through their business; and then the circuit court can get through considering the cases of that circuit, and afterwards they can take up the next circuit. It seems to me that that would be, perhaps, more accommodating both to the bar and the court.

Mr. W. T. Davidson: I accept the amendment, that it be left to the supreme court to adopt either one of those three methods. The present method, I think, is rather burdensome to the bar, sitting every other day; and it would be a great convenience if the supreme court should sit through an entire circuit, or three days at a time, or one week at a time. I am willing for either way.

Mr. Fleming: It seems to me that that is a matter on which the supreme court are much better qualified to act when it comes to a judgment, than we are. Some of those judges have been there a good long while; they have tried everything. They have tried every other day, and every day, and I think they are in a position to decide that question better than we are. The reply is that it is merely a suggestion. That is simply a polite way of passing a resolution, and I move that the resolution be laid on the table. I think they give us the best they can.

The President then put the motion of Mr. Fleming, that it be laid on the table. But being unable to decide by a viva voce vote, members were requested to vote by holding up their hands. The result was that the motion to lay upon the table was lost by a vote of ten to twelve.

Secretary Akin: Mr. President, I think we ought to be very serious in discussing such a question as this. I know it is hard for us to be serious after we have been to the



club; but I most respectfully insist that such a question as this should bring out all the seriousness in our nature. or what little is left. I think the point made by Mr. Fleming is well taken, very well taken, excellently well taken. I do not think we ought to make such a suggestion as this to the supreme court. I think the worst proposition of all is that offered by my friend Mr. Wright, that they wait before delivering opinions until a circuit is completed, because we will then hear, and perhaps justly hear, complaints that they waited too long after arguments before rendering decisions. I believe some of the circuits have as much sometimes as thirty or forty cases at one term of court. If the supreme court were to stop until they had heard arguments in forty cases before they decided the first one of that forty, it is more than we ought to expect of the human mind to say that the arguments and authorities in that case would be as fresh in their minds as they were the day after it was argued. So far as I am concerned. I believe that the rule they now have is the best that could be adopted for a proper and careful consideration and decision of the cases before them. But without discussing what particular method is best, it strikes me that we would be going beyond the purpose of the Association if we attempted to make such a suggestion as this.

Mr. Fleming: I move, Mr. President, that the resolution be indefinitely postponed.

Mr. Wright: Mr. President, I think that this is a very fruitful subject of debate. We have not much business before the Association; and it does seem to me that these motions to choke off discussion are not entirely germane. Now, I think, Mr. President, that the supreme court are here with us, and they are all one of us. I do not think they regard themselves as being upon a high mountain and we upon a low plain. They are here ready to receive suggestions. Judge Bleckley said this morning that he was in for reforming; he was one of the boys, one of the young men. We all feel that he is one of us. For that reason I feel freer to make this suggestion. We have to stay in Atlanta now twice as long as we used to stay. is a pleasant place of course; that suggestion will carry force with everybody outside of Atlanta. I do not believe that any circuit lasts long enough to make the learned judges forget the cases that are argued. I believe briefs left with them, and the impressions that the arguments

make upon their minds will last long enough to enable them to decide a question. In that way the bar will be saved a great deal of expense. In that way husbands will go back to their wives, and the busy lawyers back to their clients. The convenience of the justices is a great deal, but it is not everything. The bar are here to look after their own interests. We are here to recommend certain things that are for our benefit, and the benefit of our clients. because we are obliged to charge them for it, and therefore, in Chief Justice Bleckley's language, that justice should be made chief: it is some reform. It may be but one step. but it is a step. I think it is a practical question. I think this arguing questions one day and keeping lawyers of the circuit twice as long as they ought to be kept there is a serious question, a question affecting the lawyers, the clients and the courts. The only persons it can benefit are the hotel keepers in Atlanta. I think if my suggestion is not taken, to take up a circuit at a time, they should at least take up one week at a time, so lawyers in the next circuit would have something to go upon; and I do think, while it may be a mere recommendation, that our Chief Justice and our Associate Justices will pay some attention The object of our Bar Association is to make recommendations, and I do not know that our supreme court is any higher body to recommend to than the Legislature and the Governor and other departments of government. believe they are willing to receive our recommendations with the same degree of respect that the Legislature would receive them, and for one I am in favor of some change. I do not care whether it be the one suggested by Brother Davidson, or the one suggested by myself. For one, I am not afraid to recommend to the supreme court.

Mr. Barnett: Mr. President, I think this is entirely out of order. I think it is but usurping authority, and my opinion is it is none of my business, and I am heartily opposed to it. I think the supreme court have a right to be indignant at any action like this.

Mr. W. T. Davidson: Mr. President, I do not think myself that the supreme court (though they have the ultimate decision in all cases) are prepared to disregard what might be the convenience of the bar. I have noticed of late they decide sometimes as many as twelve or thirteen cases a day. I think if the court set the first three days in the week, they would get along with but little more inconvenience than now. It is only a mere recommendation to

the supreme court. Of course we know they have the right to disregard, and wholly disregard it, and ought to disregard it, if it is to their best interest to do so. But, thinking they will not discommode themselves, and at the same time they will serve the bar, I made the motion. My preference is that they would sit the whole of the first three days in the week.

Mr. Hill: Mr. President, although laboring under a very severe headache. I think that the discussion on a matter in which the wishes of lawyers have been expressed will bring the matter to the attention of the court, and that, practically, by this discussion there has been accomplished everything that would be accomplished by a formal adoption of the motion by a vote. I have not talked with any member of the supreme court on this subject, nor upon any kindred subject that would entitle me to speak of what would be the impression of the court upon an action of this kind. But, Mr. President, and gentlemen, we owe a great deal to the Supreme Court of Georgia for the success of this Association. Judge Bleckley has been our constant friend, and has done a great deal of work for the Association. This court has done us the honor at every annual meeting which has taken place during the session of the court to adjourn its session, and to be in attendance upon our body, and we ought, perhaps, to be on the ultra conservative side. Therefore, I beg leave to oppose the adoption of this resolution. I do so upon the ground that whatever good will come out of the adoption of the resolution has been practically accomplished already. The members of the supreme court are here. They have heard the wishes of the several members of the bar expressed. It has been evidenced upon the motion to table that there is at least a majority of this body—and, by the way, our present representation is rather small this afternoon to take any very important action—but it is evident from the vote on the motion to table that a very good majority of those present would prefer a change in the present sessions of the supreme court. Therefore, that matter is already sufficiently lodged in the minds of the judges present, and in view of their very respectful and courteous consideration of our interest, adjourning their court pending our meetings, I feel that it behooves us to be on our Ps and Qs to see that we do not by any recommendation trespass upon what might be regarded a matter peculiarly within the province of the members of the court. Upon this ground I wish to oppose the adoption of the motion.

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The President: Gentlemen, all those in favor of the adoption of the resolution offered in the alternative—

Mr. Fleming: Mr. President, the motion was to indefinitely postpone. That has not been voted upon yet.

The President: That is so.

The Chair then put the motion to indefinitely postpone, which was carried.

Mr. Wright: Mr. President, I voted myself in favor of postponing it indefinitely.

The President: Is the committee appointed to nominate officers ready to report now?

Mr. John S. Davidson: Mr. President, under the Constitution and By-Laws, it is necessary to elect these officers by ballot. I believe it is customary, if there is no opposition, to authorize some member of the Association to cast the ballot under a resolution to that effect.

The President: Gentlemen, the rule requires that they shall be elected by ballot, unless a motion is made suspending the rule.

Mr. McCord: I move that the rule be suspended, and that the Secretary be requested to cast the vote for the officers named in the report of the committee.

Carried.

Secretary Akin: Mr. President, in obedience to the resolution of the Association, I cast the ballot as has been ordered.

The President: Gentlemen, the gentlemen reported have been duly elected officers of the Association for the ensuing year.

Mr. John S. Davidson: We now move in the event that Col. Z. D. Harrison does not consent to act as Treasurer, that the Executive Committee be authorized to fill the vacancy.

Carried.

The President: The next in order is miscellaneous business. Is there any miscellaneous business before the Association this afternoon?

Secretary Akin: Mr. President, the following telegram has been sent to Mr. Cumming, and then sent to me with the request that I read it:

"Macon, Ga., 15th May.—Hon. Joseph B. Cumming: Please inform Bar Association that sickness in my family, and serious illness of my law partmer, prevents my attendance.

CLIFFORD ANDERSON."

I am in receipt of a letter from Judge Hopkins, in which he states that serious personal afflictions in his family prevents his presence and the preparation of a paper that he had promised, and which, he said, he had started to select material to prepare. Mr. Henry Jackson also asked me to present his deep regret that he could not be here, and nothing but the most urgent business prevented him from being here. Before we adjourn, I move the adoption of the following resolution by a rising vote:

"Resolved 1st, That the gracious courtesy shown our body by the Augusta bar, and the brilliant reception tendered us by the Hon. Frank H. Miller, are too warmly appreciated to be marred by any formal expression of thanks.

"Resolved 2d, That the local press has our grateful acknowledgment for their kind and sympathetic attention and reports of our proceedings. The press stands as an exponent and defender of public virtue, and we recognize in the Augusta papers worthy members of a noble profession."

Mr. Peabody: Before we adjourn, I move that a vote of thanks be tendered to the retiring President of this Association for the zeal and efficiency with which he has discharged the duties of the office during his term of office.

Mr. Hill: In order to relieve the President from putting a vote of that character, I wish to call attention to the fact that several years ago a by-law was wisely adopted in anticipation of motions of that kind, and the by-law is that, "No resolution complimentary to any officer or member shall be entertained."

Mr. Peabody: I withdraw my motion.

On motion, the Association adjourned sine die.

# APPENDIX No. 1.

#### PRESIDENT'S ADDRESS.

## Gentlemen of the Georgia Bar Association:

Expecting that our distinguished countryman, Mr. John G. Carlisle, would address you upon one of the more recondite subjects appertaining to our profession, and knowing that the essays of our members would necessarily be technical in their character, I have ventured to stray somewhat from the beaten track, and to impart to my address, perhaps, a more than customary literary, or even rhetorical flavor. I have therefore chosen as my subject

#### THE PHILOSOPHY OF LEGAL BIOGRAPHY.

"Man's sociology of nature." says Carlyle, "evinces itself in spite of all that can be said, with abundant evidence by this one fact, were there no other, the unspeakable delight he takes in biography. It is written, 'the proper study of mankind is man,' to which study let us candidly admit he, by true or false methods, applies himself nothing loath. Man is perennially interesting to man; nay, if we look strictly to it there is nothing else How inexpressibly comfortable to know our felinteresting. low creature; to see into him, understand his goings forth, decipher the whole heart of his mystery; nay not only to see into him, but even to see out of him, to view the world altogether as he views it, so that we can thoroughly construe him, and could almost practically personate him, and do thoroughly discern both what manner of man he is and what manner of thing he has got to work on and live on."

History, it has been said, is the essence of innumerable biographies. But this essence has usually been so compounded as to mingle the elements of which it is composed into one common mass, the ingredients of which are no longer separable or distinguishable.

Macaulay declares that the perfect historian is he in whose work the character and spirit of an age is exhibited in miniature. He considers no anecdote, no peculiarity of manner, no familar sayings as too insignificant for his notice, which are not too insignificant to illustrate the operation of laws of religion and of education and to mark the progress of the human mind. Men will not merely be described, but will be made intimately known to us. The changes of manners will be indicated not merely by a few general phrases or a few extracts from statistical documents, but by appropriate images presented in every line. And he adds if history was thus written we should not have to look for the wars and votes of the Puritans in Clarendon, and for their phraseology in Old Mortality; for one-half of King James in Hume and for the other half in the Fortunes of Nigel.

There can be no question that to the extent to which history retains the characteristics of biography, to that extent will it become the more pointed, instructive and interesting. History has been beautifully defined to be philosophy teaching by examples. But a little reflection will convince that it teaches rather by the example of individuals than by the example of events. Occurrences that would make but a feeble impression upon the great mass of mankind, acquire a personal interest and are interwoven with the feelings and passions when they display and illustrate particular lives. 'The great events of the world are interpreted by the living actors upon the stage. hero in the foreground gives life to the picture. The history of ancient patriotism is read in the sacrifice of Codrus and of Curtius. Republican virtue is remembered in the fidelity of Regulus and the integrity of Fabricius. The consolidation of Frankish power is best exhibited in the life of Charlemagne. roic endurance of the Netherlands is read in the story of Philip The crusades are remembered in the piety of St. Louis and the chivalrous courage of Richard. Not all the eloquent descriptions of Tacitus and Livy can excite the attention and enlist the feelings like the personal narrations of Plutarch. Carlyle asserts that even in the highest works of art our interest is too apt to be strongly or even mainly of a biographic sort.

enjoy a poem because it is reminiscent. We gaze with delight upon a picture because it has an association. Our soul melts to to a song because it is an echo of our childhood. Among all the excellent papers read by lawyers in New York in February last, upon the occasion of the celebration of the organization of the Supreme Court of the United States, none proved more generally interesting and satisfactory than that of Mr. Thomas J. Semmes upon the personal characteristics of the Chief Justice. It was an able address, but it was not a learned thesis upon some recondite subject. It did not deal with generalities. It peered into individual histories and its biographical character at once gave it audience and secured for it interested attention.

If this insight into personal careers proves so generally entertaining, some scrutiny into the lives of the great men of our profession should not be devoid of interest to us.

Alexander exclaimed upon the good fortune of Achilles, who had a Homer, as the exponent of his virtues. Many of the bright lights of the legal profession have had their lives portraved by distinguished writers, but as a rule they have afforded us but little insight into the most interesting portion of every man's history that hidden and inner life which solves the mystery of his heing and action. "Your modern historical restaurateurs." says. Carlyle, "are indeed little better than high priests of famine that keep choicest dinner sets, only no dinner to serve therein. Yet such is our biographic appetite; we run trying from shopto shop with ever new hope, and unless we could eat the wind. with ever new disappointment." This is particularly true of the biographies of distinguished lawyers. The political eminences they have attained, the great connections they have made, the prominent positions they have filled, the wealth and fame they have acquired, are duly chronicled and listed. But in all this maze of reputation and glory, the true life of the individual floats in a dull nimbus, and we close the book in disappointment that we know so little of the man. The subject is clothed in his robes of office; he is propped and posed for his sitpictured for posterity. The smile that doubtless sometimes varied his countenance, the free and unstudied motions that marked his abandon, the easy attitudes that came to him when once thrown off his guard, have no presentment. The true portrait is turned against the wall, and only the high stations that he filled are labelled on the back. He gazes at us from his gilded frame, the stiff embodiment of elaborated lines. To enable us to know him truly he should have been taken with a Kodac.

It is, alas! our misfortune that none of the great members of our profession have had a Boswell for a biographer.

How very entertaining it would have proved to us if some industrious searcher after truth, with a microscopic tendency, had done for our profession what the elder Disraeli accomplished for the literary character; if we had revealed to our curiosity those hidden forms of life which move about the bottom, instead of being limited in our vision to the more obstrusive phases of the surface. What we need are the revelations of the deep sea soundings. How little we know of the secret influences that moulded or moved the lives of the great members of our guild. Of the literary character, of the musician and the painter, we know something; of the lawyer much less.

We are told that when Newton was weary in the preparation of the Principia, he took an ivory ball in his hand and closed his tired eyes; with the access of sleep, the muscles relaxed, the ball fell to the ground and roused him from his momentary but refreshing slumber. Mendelssohn relieved the strain of composition by counting the tiles on the house top. Voltaire slept with paper and pen by his side. Rousseau rose during the night and pencilled the momentary suggestions of his fancy. Bacon left us his "sudden thoughts set down for profit." Leorardo da Vinci carried his sketch book in his girdle. Hogarth stopped on the street to catch a character on his thumb nail. How very little knowledge of this character we possess about the lives most interesting to us. In the elaborate biographies of the Lord Chancellors and Chief Justices of England,



worthy of preservation.

How deeply interesting to us if we could obtain a true por traiture of those great characters who have helped to start and stimulate our own professional careers, and have been the guiding stars in our lives-if we could only see where the first drops fell and trace them, trickling on, until augmented into a current deep and strong, or watch them diverted into some wayside shallow and wasted there. If we could know whether they were lodged on mountain top, mingling with purest dew, thence flowing onward through fair plains, reflecting sun and stars, leaping bravely from crest to crest, yet never losing way, issuing at last in the bold stream which turns the wheels of thrift and pursues its onward and increasing flow until it mingles with the sea-or dashing boldly from some great crag, yet failing in its leap and wasting its volume in froth and spumeor falling in marshy ground, impeded by ooze and slime, scattering its forces among weeds and burying its promise the earth.

But the life itself, interesting as it is, and attractive in its most minute details, is yet less interesting than the philosophy which explains and guides the life. We see the stately ship, with all its canvas spread, and watch its onward movement, but we seldom see or note the hidden rudder which governs and directs its course. And yet there is in every life a philosophy subtle but incisive; its incidents are not always accidental; its changes are not kaleidoscopic, but succeed each other in a sequence, as the aspects of the sky follow the rise and fall of day. Its groupings are not the aggregations of chance. Its course is not fortuitous. From its beginning to its end it is subject to a moral as well as physical control. An ill assorted manhood must of necessity succeed a misdirected youth. Sir Edward Coke, in an address to a beginner, declared: I never saw any man of a loose and lawless life attain to any sound and perfect knowledge of the laws.

Some of the schools of philosophy have asserted that all men are born with equal minds. The school, of which Locke may be regarded as the great exponent, announced the theory inscribed are the products of education, influence and surroundings.

But there can be no question that in the very outset of lifemen differ radically from each other in their mental and moral constitution; and yet it is equally certain that the natural temper and capacity can be modified, if not eliminated, by influence, example and training. The real difficulty is to discover how much of the after developed life is attributable to natural' bias, and how much to education and habit. In his Preface tothe Comedy of Human Life. Balzac declares that society is like Society makes the man. He develops according to the social centers in which he is placed. There are as many different men as there are species in zoölogy. The differences between a lawyer, a soldier and others, though more difficult to decipher, are as marked as those which separate the wolf or the lamb from other animals. There have always been, and always will be, social species, just as there are zoological species. It is the true province of philosophy to penetrate these subtle influences — to reach those hidden nerves, as fine as gossamer, yet as strong as steel, which direct and govern our movements — to uncover those underlying suggestions, which like the minute stops of a great engine, regulate the ponderous To do this is to discover the golden clew of Ariadne which shall guide us aright through the darkest labyrinth of human life. It is obvious that the field is too wide for extensive exploration, and that all that is possible in a brief essay is to point out some of the influences which have helped to form and direct the careers of some of the great men of our profession. In the study of their lives it is apparent that the measure of interest as well as of instruction must be largely enhanced if we direct our scrutiny not so much to the incidents which lie upon the surface as to those subtle and complex springs of action which regulate the human economy. "The key to all science," declares Balzac, "is undoubtedly the note of interrogation. We owe most of our great discoveries to the word 'How,' and the wisdom of life consists in asking ourselves at



every turn 'Why.' We should, therefore, persistently repeat the question what is the secret of this life — what were its earliest surroundings — what its domestic influences and example—what its religious and moral suggestions and training—what its mental facilities—what its engrafted habits—what its stimulants or depressions, its accidents and its incidents—what peculiar influences diverted its energies into certain channels—what led it through peaceful valleys sloping away from the summit—what encouraged its steps to the steeps of the mountain, with an inveterate propensity for ascension—what depressed it into shadow and gloom—what invited it into sunshine and light—what made it a poor and feeble career—what imparted to it grandeur and strength, and expanded the scope of its vision—what in fine was the germinating principle and the true philosophy of the life.

It may be well to ask in the outset how did it happen that the great men of whom we are justly proud selected the law for their vocation; why were their energies and abilities not diverted into some other pursuit. It seems natural that the sons of lawvers should incline to the paternal vocation, but we are not aware that the profession, like many other employments, has ever been hereditary; and this very fact conveys a high compliment, and proves that, in spite of antecedent equipment and surroundings, personal fitness and adaptation are essential qualities for success. Before the great Presbyterian divine, Dr. Palmer, accepted his charge in New Orleans, he was invited to preach in Savannah; among his interested auditors was Judge Nicoll, then presiding in the District Court of the United States. The speaker well remembers Judge Nicoll's emphatic lament: "Oh what the bar has lost in that man."

The bar has doubtless lost many great intellects which have been diverted into other pursuits; but the bar has also recruited from other professions, and has been illustrated by many great names designed for some other vocation. It would be very interesting to trace the influences through which they have been secured to the profession of the law. We may rest assured that such accessions were not accidental, but that in every instance some sufficient reason dictated the adhesion.

Coke was himself a prosperous lawyer and a natural proclivity for the profession was imparted to the son; but the moving cause of his entry was the premature death of the father, leaving the family estate charged with his mother's jointure and portions for his seven sisters, the necessity thus imposed upon him for personal exertion, the opening offered for the earnest ambition with which he was imbued, and the strong incentive of a grasping desire for riches.

The father of Sir Matthew Hale was a lawyer, but abandoned the profession because his tender conscience could not tolerate the then prevailing legal fictions, particularly the giving of color in pleading. The future Chief Justice was intended for a minister of the reformed faith. He himself, however, had strong military propensities, and had determined to become a soldier under the Prince of Orange.

Before setting out for the Continent, he went to London to take advice in reference to his patrimonial estate. His leading counsel there was the learned Sergeant Glanville, with whom he had many conferences. This great lawyer succeeded in giving his enthusiasm a new direction, and to his persuasion and influence we may ascribe Hale's adoption of the profession of which he became so conspicuous an ornament.

The early life of Chief Justice Holt was so obscure that nothing is known of the influence which brought him to the bar. His father was a lawyer and destined him for the profession, and caused his name to be entered on the books at Gray's Inn when he was only ten years of age.

Chief Justice Wilmot, the most diffident and retiring character for a truly able and learned man that perhaps England ever produced, had a passion for entering the Church and passing his days in pious obscurity. But his father, who recognized his talents, resisted his desire and insisted upon his becoming a lawyer. To his filial obedience to the parental wish may be attributed his subsequent distinction.

It was intended that William Murray, who as Lord Mansfield shed such luster upon our profession, should take orders in the English Church, and this would doubtless have been his



career but for the interference of a wealthy English nobleman wholly unconnected with him by blood or affinity. While at Westminster School he visited the great hall, and heard the pleadings of Yorke and Talbot; like Demosthenes he was roused by hearing a pleader of causes, and he felt, as he described it, "that he had a calling for the profession of the law." His parents were not possessed of sufficient means to gratify his desire; but Lord Foley, impressed with his ability and the evident bent of his mind, kindly tendered the means for his legal education in the form of a loan to be repaid out of his future professional earnings. To this circumstance we may attribute the appropriation of this great legal luminary to the vocation for which nature had evidently designed him.

The poet Cowper was intended for the profession, and was actually called to the bar; but nature had created him for a poet, and his timid and retiring disposition clearly unfitted him for the strife incident to the vocation of a lawyer. He made no attempt to practice, and, being in necessitous circumstances, he attempted suicide rather than pass an examination to test his fitness for the lucrative office of Clerk to the Committee of the House of Lords.

William Pinckney, the great advocate, at first studied medicine, but soon discovered that he had mistaken his vocation. He then applied hirself with ardor to the study of the law, of which he became so distinguished an ornament.

The economy and self-denial of the mother of John Rutledge, the second Chief Justice of the Supreme Court of the United States, enabled her son to visit England, and in his nineteenth year he became a law student in the Temple. At that time Lord Mansfield was presiding in the Court of King's Bench, and Rutledge was brought into contact with some of the greatest legal minds in England. To the influences thus brought to bear upon him, may be attributed his permanent adoption of the profession and his eminent success as a practitioner.

Illustrations might be indefinitely multiplied, and in every instance some sufficient reason is assignable for the adoption of the legal profession.

Perhaps an exception may appear in the life of Patrick

Henry, whose latest biographer (Tyler) intimates that he became a lawyer because there was nothing else for him to do.

A very prominent feature to be observed in the lives of eminent lawyers is a close association between professional ability and the power to overcome personal disabilities and infirmities. This philosophical element in the biographies of great lawvers commends itself particularly to those who have recently entered, or are about to enter the profession. To this must be added the quality of tireless assiduity, combined with the fortitude of a patient waiting for success. The eloquent words of Balzac about the prosecution of art are equally applicable to the legal profession: "the solution of the problem can be found only through incessant and sustained work, for the material difficulties must be so wholly vanquished, the hand so trained, so ready, so obedient, that the sculptor shall beenabled to struggle soul to soul with that invisible moral nature, which must be transfigured while materializing it. If Paganini, who told out his soul on the strings of his violinhad spent three days without studying, he would have become an ordinary violinist." The speaker once heard the late Mr. Beecher preach a very remarkable sermon upon the subject of Christianity: he declared that Christianity was not an ideal state, but a purely practical condition; that almost every oneof his auditors was conscious of some vice or weakness incompatible with the true practice of Christianity, and that, unless the courage existed finally and forever to renounce such infirmity, it was folly to think of becoming a Christian. certain extent, this statement may be applied to every vocation, but more particularly to that of the lawyer.

The successful prosecution of our profession necessarily involves great self-control and great and persistent self-sacrifice. The very possession of talent, and of that ardent and earnest temper which spurs talent to its goal, often implies an associated aberration; and the achievement of prominent success and distinction at the bar is usually incompatible with the continued presence of an underlying weaknes. The careful study of legal biography will very clearly demonstrate that our great exemplars have been scarcely more distinguished by

eliminating native infirmities of taste or temper. The presence of some opposing disability, and its successful dethronement, is a common ingredient in legal biography. It is almost axiomatic that the great lawyer is the self vanquisher. Every school boy is familiar with the severe methods pursued by Demosthenes to overcome his physical infirmities. Similar methods can be discovered in the lives of many prominent lawyers.

Chief Justice Jay suffered with an indistinctness of articulation, which exposed him to the raillery of his comrades; he read in a hurried and confused manner. By incessant care and attention, and by the daily practice of reading aloud, he succeeded in overcoming these defects.

A very striking illustration is furnished in the life of Sir Matthew Hale; at the time he determined to adopt the law for his profession, he felt himself strongly led away by the play actors, and realizing that this was his great temptation, and could not be enjoyed by him in moderation, he made a vow "never to see a stage play again," and this he ever afterwards Writing to his grandchildren forty-seven years strictly kept. after, he warns them against the frequenting of stage plays "as they are a great consumer of time, and do so take up the mind and phantasy that they render the ordinary and necessary business of life unacceptable and nauseous," going on to describe his own life and how he had conquered his passion for this recreation. He still continued, however, to associate with some of his boon companions and to run the risk of being seduced into idle and dissolute courses. At a merrymaking with some students near London one of the party drank so much as to fall down apparently dead. Hale was so shocked that he went into another room to himself, fell on his knees and prayed to God for the life of his friend; and he vowed that he would never again keep company in that manner, or drink a health while he lived. He religiously kept this vow to his dying day, and refused to drink even to the King's health, though his abstinence often subjected him to animadversion and unkind criticism. Among the noble rules which he laid

tion of justice I carefully lay aside my own passions, and not give way to them, however provoked.

The biographer of Chief Justice Holt declares that it would have been most interesting and instructive to trace the formation of such a character, and expresses regret that so little authentic information could be obtained: but he adds. confihis devoted application to business, his unthat wearied perseverance, and uniform self-control could only have been the result of a submission to strict discipline in early youth. It was, however, asserted of him that he vielded in the outset to many irregularities; that he copied the example of Henry the Fifth when the associate of Falstaff, indulged in all sorts of licentious gratifications, and even took purses on the highway; and it was related of him that, going upon the circuit, many years afterwards, a man was capitally convicted before him whom he recognized as one of his accomplices in a vouthful robbery; and that having visited the prisoner in jail and inquired after the rest of the gang, the man replied: Ah. my lord, they are all hanged but myself and your lordship.

If he ever was dominated by such weaknesses, he had the manhood to conquer them speedily; and he rapidly rose so high in his profession that many lovers of jurisprudence regard him with greater veneration than any other English judge. When Alexander Wedderburn, afterwards Lord Loughborough and Lord Chancellor of Great Britain, removed from Edinburgh to London, he found that his Scotch dialect offered an impedi-His desire to purify his accent grew into ment to his success. a passion, and to accomplish this end he was willing to submit to any privation or exertion. Scotchmen he long avoided as if afraid of some contagious disease by shaking hands with them. He ascertained that Sheridan, the elocutionist, was in London, and he entered into a contract by which the latter agreed to give the lawyer most of his time. Sheridan came daily to the temple at an early hour in the morning, and with a short interval for breakfast, they continued talking, reading and reciting together during the greater part of the day. When Sheridan was obliged to leave London, his place was supplied



by Macklin, the great actor and dramatist. Under these two instructors Wedderburn continued to practice for many months, until, by degrees, a great change was accomplished in his accent and delivery.

To the prodigious labors and heavy task work of great lawyers reference is unnecessary, as industry and exertion are essential elements of success in every pursuit. But as ultimate advancement in the profession is necessarily preceded by tardy progress, the self-denial courageously yielded, and the stoutness of heart maintained under the depressing influence of hope deferred, are worthy of emphatic note. Sir Edward Coke rose every morning at three, and in the winter season lighted his own fire. Lord Eldon rose at four, took little exercise, made short and abstemious meals, and sat up late at night studying with a wet towel round his head to drive away drowsiness. Sir Matthew Hale always rose from his meals with an appetite. Lord Chancellor Clarendon departed from the prevailing custom and would take no supper, although with his associates it was the principal meal. Whatever obstructed professional success the great men of our vocation have cheerfully vielded.

Lord Keeper Guilford was almost sinking in the slough of despond when suddenly taken by the hand by the great lawyer, Sir Jeffrey Palmer; he was often heard to declare that if he had been sure of a hundred pounds a year to live on he would never have been a lawyer. The great Lord Mansfield remained at the bar two years without a brief. Lord Thurlow attended the bar several years unnoticed and unknown. The practice of Lord Camden was at one time so inconsiderable as almost to determine him upon abandoning the profession. Lord Grantley is said to have toiled through the routine of circuit, and a daily habit of attendance in Westminster Hall, for many years without a brief.

Dunning, Lord Ashburton, remained unknown for many years; he was three years at the bar without receiving so much as one hundred guineas all told.

Francis Jeffrey was at first very despondent and thought of going to India; he declared that if his personal friends should

seven he wrote to his brother: "My profession has never yet brought me one hundred pounds a year."

But it is useless to multiply instances to prove that the prominent men in our profession have risen not merely from the possession of talent, but through the addition of self-control and fortitude. It has been asserted that the great lawyers of England rose to eminence because most of them started life without a shilling in their pockets.

Lord Campbell, in his life of Lord Chancellor Bathurst, makes this statement: "I have known a few, and a very few, peers who have gained distinction though born to a peerage \* \* Almost all the peers who have displayed much energy and talent in my time have either themselves been created peers, or were born before their fathers were created peers, or had begun their career as younger brothers. The res angusta domi is not so hard to struggle with as the enervating influence of wealth and high position without the necessity for exertion."

The truly great men of our profession have become great because they found obstacles to surmount and mountains to climb. Their mental muscles have been hardened, and the lungs of their minds have expanded, in the bracing atmosphere of effort, and through the grand exercise of ascension.

Perhaps the most interesting feature in the philosophy of legal biography consists in tracing the influence exerted by particular studies and mental habitudes in the formation of the professional constitution. The intellectual environment of the man—like his spiritual environment so ably demonstrated by Drummond—must necessarily exert a powerful, and even controlling, influence upon his life. Anything, however, like an adequate amplification of this topic would exceed the limits of this address. Bacon has asserted that "there is no strond or impediment in the wit but may be wrought out by fit studies"; and in the true spirit of that philosophy which controlled all his researches, he declares, in the De Argumentis, that the effort should be made to discover what are the actual effects produced on the human character by particular modes of education, by the indulgence of particular habits and by the study



discover what mode of training was most likely to preserve and It is manifest that Bacon prosecuted his restore moral health. studies under the suggestions of this noble philosophy, and that, in a technical and black letter age, he was able to cast aside the worthless debris of the past, and to build with new material for the future. His knowledge of the laws of England was not perhaps so greatly inferior to that of his great rival. Sir Edward Coke, but his mind was liberalized and enlarged by the character of his studies, and the tendency thus imparted to his thought, how vastly different the result to posterity. biographer tells us that the mind of Coke was never opened to the contemplation of philosophy, and that he had no taste for elegant literature. He made some progress in classical learning. but he took more delight in cramming the rules of prosody than in perusing the finest passages of Virgil. His temper was Unlike Sir Matthew Hale, he never saw a cold and selfish. play acted, or read a play, or kept company with a player. Macaulay calls him a narrow-minded, bad-hearted pedant. He classed the worshipper of the muses with the most worthless and foolish of mankind: "The fatal end of these five," he declared, "is beggary-the alchemist, the monopotext, the concealer, the informer, and the poetaster." He prepared a work as profound in its learning as that of the Schoolmen, and now almost as ittle read. He guided some lawyers to success through much tribulation, but "he disheartened many a tyro." While he found delight in the illustration of such subjects as Villenage, Continual Claim and Collateral Warranty, Bacon was writing the Novum Organum. Coke was expending his great intellect upon subjects destined to disuse, while Bacon was preparing the preface to some of the grandest chapters of human progress.

In the outset of their professional life the difference between the mental capacity of Lord Coke and Lord Mansfield was probably not radical; but the course, and character of their studies resulted in striking mental departures. Lord Coke eschewed all liberal cultivation, and dedicated his intellect almost exclusively to the learning of the year books and the established and technical precedents of the common law.

systematically and severely a course of the most liberal study. Aspiring to be a lawver and a statesman, he made Cicero his chief favorite, and he used to declare that there was not a single oration of this author extant which he had not translated into-English, and then retranslated into Latin. He also practiced original composition, and devoted much of his time to the muses. He thoroughly grounded himself in ancient and modern history. applied himself to ethics, and mastered the Roman civil law which he declared to be the foundation of jurisprudence. was very fond of poring over the Commercial Code recently promulgated in France under the title of "Ordinance De La Marine," and he indulged the hope, afterwards so auspiciously fulfilled, of introducing it into the jurisprudence of England through the medium of well considered judicial decisions. Lord Mansfield thus acquired a breadth and largeness of vision which the more technical student never obtained. While the great talents of Coke petrified around the year books, the cultured abilities of Lord Mansfield overflowed in that copious and fertilestream which has enriched the ages. It was a fortunate circumstance for his country that the mind of Lord Mansfield acquired this broad and liberal tendency. It enabled him to decide the commercial questions coming before him to the enduring benefit of the people. The tendency of Lord Coke's training would have limited commercial usages to the technical narrowne's of a precedent. He would have felt bound by the judgment of the year books that a chose in action could not be transferred, because incapable, like land, of livery of seisin, But the mind of Mansfield had acquired from the course of his studies, a larger and a freer life; it was permeated with broader and more liberal views; it was not contracted to the area of a precedent, and it expanded the growing commercial code into a comprehensive and practical system, embracing the universein its scope.

That the prosecution of legal studies exerts a marked influence upon the mental characteristics of the profession, and to a certain extent classifies every lawyer, is very philosophically noted and proclaimed by DeTocqueville in his Democracy



selves to legal studies derive from them certain habits of order, a taste for formalities, and a sort of instinctive regard for the regular connection of ideas which naturally render them hostile to the revolutionary spirit and the unreflecting passions of the multitude. And he asserts his belief that a Republic could not exist if the influence of lawyers in the public business did not increase in proportion to the power of the people.

Burke, in his usual philosophic vein, very skillfully indicated the influence of legal studies in drawing the character of Mr. He demonstrates that Mr. Grenville's obstinate advocacy of American taxation was the natural result of his education; that he was bred to the study of the law which tended to impart a fixed, positive and technical character to the mind. From the law, he passed into the business of office, where his comprehension was still further cramped by the limited and fixed methods and forms prevailing there. form with him acquired the significance of the substance. could not break through the shell that encompassed him, and an intellect naturally strong and comprehensive was dwarfed and restricted to the narrow confine of the forms that impris-In his speech on Conciliation with America, Burke declares that the study of law renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In his Reflections on the Revolution in France. he says, speaking of lawyers, their very excellence in their peculiar functions may be far from a qualification for others. It cannot escape observation that when men are too much confined to professional and faculty habits, and, as it were, inveterate in the recurrent employment of that narrow circle, they are rather disabled than qualified for whatever depends on the knowledge of mankind, on experience in mixed affairs, on a comprehensive connected view of the various complicated external and internal interests which go to the formation of that multifarious thing called a State.

The characteristic of the English common law, which limits inquiry to what has already been decided, assures success from the discovery of a precedent, and checks all discussion into and preserve the limits of constitutional government, does not tend, when uncombined with broader studies and views, to enlarge and liberalize the mind.

Sir Matthew Hale was so assured of this that he devoted himself to the study of the Roman law, and he lamented that it was so little understood in England; he declared, as one of his maxims, that no man could be absolutely master in any profession without having some skill in other sciences. The result was that, in conjunction with some of the jurists of that day, similarly enlightened, he drew up the heads of all the great legal improvements which have since been introduced, and of some for which public opinion was not yet ripe when his biography was written. What a striking contrast to those who confined their knowledge to the technical black letter lore of the day, which in itself fettered the understanding and circumscribed the vision.

From the conquest until the latter half of the fourteenth century the pleadings in courts of justice in England were in Norman French, until in the 36th of Edward the Third, it was ordained that they should be in the English tongue. Prior to this enactment the Norman French had become a jargon of French and Latin, which none but professional lawyers could understand; and yet, in spite of the statute, the lawyers continued to use it, so much had the professional taste been corrupted and professional enlightenment been impeded. Roger North's essay on the study of the laws, he enthusiastically enforces the necessity of learning the old Law French, and declares that lawyer and Law French are coincident-one will not stand without the other. To acquire this barbarous jargon--a tongue essentially dead, if it ever had life-was the first object of the law student, and Lord Campbell records that he heard Lord Ellenborough from the bench regret the change upon the ground that it tended to make lawyers illiterate. So blind became the adhesion to empty forms that an instance is related of the trial of a Welshman for his life, before a Welsh jury, where Sergeant Haywood, presiding as Chief Justice, refused to permit the use of an interpreter, although neither the what but the influence of such a system and of such studies could so eliminate all sentiment that, upon the occasion of the marriage of Sergeant Hill, of great black letter fame, to the rich heiress, Miss Medlycott, he remained in his chambers, completely buried in black letter lore, entirely forgetful of his wedding, until a party of friends dragged him away from his precedents, and forcibly carried him to the church after his bride had been waiting for him more than an hour.

At the period of the accession of Sir John Holt to the Chief Justiceship of the Court of King's Bench, commerce and manufactures in England began to acquire much greater importance, and the office and value of personal property were largely enhanced.

Had the mind of Holt been trammelled by the rules of the vear books, and limited to the black letter learning, the commercial supremacy of Great Britain would have been seriously retarded. But his understanding had been liberalized and enlarged by the study of the Civilians—then as unknown tomost English lawvers as the Talmud-and availing himself of his knowledge of the Roman law, he stretched the common law so as to meet the new needs of his country, and inoculated those freer and broader ideas which his more generous studies had grafted. By a long series of decisions, and by an Act of Parliament which he suggested, he outlined the Code by which commercial securities are regulated almost as it exists at the present day. In his celebrated opinion in the case of Coggs against Bernard, he expounded the whole law of bailment, and the principles then established still substantially prevail. is safe to say that a mere common law lawyer, however learned in the year books, could never have rendered such a decision. Unquestionably Lord Holt was gifted by nature with a large and generous understanding, but the forecast and ability he displayed in rejecting ancient crudities, and in constructing the edifice of the law anew, must be attributed chiefly to the liberality of a mind opened and enlarged by liberal studies.

Lord Eldon was permeated with all the ancient black letter learning, and was in consequence an advocate of the old method

of preparation for the bar. In a letter to a young friend who was about to begin his legal studies, he advises him to read Coke upon Littleton, and even goes so far as to assert that men who are bred by reading Blackstone will never be lawyers; he says they are thus made cheap lawyers, and speaks of them as loungers only in Westminster Hall like the loungers in Bond street. Mr. Webster, on the contrary, with his liberal mind and education, deprecated the study of Coke, and declared that a boy of twenty, with no previous knowledge of such subjects, could not understand Coke; and he asks why disgust and discourage a young man by telling him he must break into his profession through such a wall.

The influence of the narrow studies and views of Lord Eldon was apparent in his intellectual products and in his official conduct. His judgments, while they always did justice between the parties, were immethodical and devoid of literary merit: it has been lamented that they ran in so narrow a circle, and did not deal more in general principles. He was opposed to all innovations, and every amelioration of the penal Code. He threw out all of Romilly's bills for reforming the criminal law. He opposed the abolition of the punishment of death for theft to the value of five shillings, and is said to have wept at the threatened overthrow of the Constitution when transportation was substituted as the penalty. His last speech in Parliament was in opposition to railroads, which he characterized as "dangerous innovations." He realized, as Mr. Millar declared, that his strength did not lie in the depth and comprehensiveness of his general views, but in the extent of his acquaintance with the minutiæ of precedents and of practice.

But the further exploration of this field of inquiry, however inviting, exceeds the limits of the present discourse. Let us conclude the topic by a reference to Thackeray's fine contrast between the literary pursuits of two lawyers, Mr. Paley and Mr. Warrington. The former is a special pleader, and is content to bring a great intellect laboriously down to the comprehension of a mean subject. The latter varied his legal studies with more liberal avocations. The world said Mr. Warrington was wasting his time, and praised Mr. Paley for his industry. But

it may be questioned, suggests the author, which was using his time the best. The one could afford time to think, and the other never could. The one could have sympathies and do kindnesses; and the other must needs be always selfish. He could not cultivate a friendship, or do a charity, or admire a work of genius, or the sound of a sweet song; he had no time and no eyes for anything but his law books. All was dark outside his reading lamp. Love and Nature and Art (which is the expression of our praise and sense of the beautiful world of God) were shut out from him. And as he turned off his lonely lamp at night, he never thought but that he had spent the day profitably, and went to sleep alike thankless and remorseless.

We may be permitted merely to glance at the philosophic value of the domestic influences and surroundings of the lawyer's life. There are very many instances where ambitious desires, and habits of study and reflection were implanted by a superior mother, notably in the cases of the brothers Scott, Lords Eldon and Stowell.

Chief Justice Marshall always ascribed his mental constitution and success to the vouthful lessons and influence of his father; and the directness and robustness of his reasoning faculty seem the natural growth of the environment and moulding of his early life. When Erskine was asked, after his first great effort which insured his success, how he could stand up so boldly against Lord Mansfield, he made the memorable answer that he thought his little children were plucking his robe, and that he heard them saying, "now, father, is the time to get us bread." While the judgments of Lord Eldon were lacking in literary culture and grace, there was present a certain bonhommie which reflected his happy home life. In his intercourse with the bar and the public, he was kindly and genial, and the bright smiles of pretty Bessie Surtees, who ran away to become his wife, shone through much of his life and his intellectual labors. his old age, when she was dead, he visited his estate in Durham, but could not find heart to cross the Tyne bridge, and look at the old house from which he took her in the bloom and tenderness of her girlhood. No wonder that, while his head

was stuffed with much black letter lore, there was an abidingsentiment in his heart, and that in his first canvass for Parliament he could relate that he ended, as he had begun, by kissing the prettiest girl in the place. It could hardly be expected that Coke would be other than crabbed and cross when weconsider the shirt of Nessus that he wore after his second marriage; for the lady applied to him constant contumely and insult, refused to take his name, and always addressed him as "Mr. Cook," in allusion to its original derivation from an humble employment, and which family pride had sought to reform in the spelling. When Coke was deposed from his highseat as Chief Justice, she rubbed salt in his wound by disfurnishing his house of all movables and plate, and concealing herself and her plunder. Eldon could weep upon occasion, and shed drops of tenderness or sentiment, Coke is alsorecorded to have wept, but they were tears of disappointment and rage. Some of the maliciously inclined accounted for the unwearied devotion of Chief Justice Holt to business by his dislike of the society of Lady Holt; just as it was said of Judge Gilbert, who wrote so many excellent law books shut up in his chambers in Sergeants Inn, that the public were indebted for them to his scolding wife.

The love and tenderness of Chief Justice Marshall for his wife partook of the constancy of his judicial temper, and his conclusions for the comfort and happiness of her life were asclear and infallible as his great judgments. His lines written on the first anniversary of her death would have made him lovable even if he had never been great, and in hanging around her memory this beautiful wreath of immortelles, he unconsciously garlanded his own.

To the splendid tribute of Bolingbroke to our profession—that there have been lawyers that were orators, philosophers, historians—that there have been Bacons and Clarendons—may be added in these modern days a still greater distinction—there have been lawyers who have been Christians. Even the crabbed Coke exclaimed with his dying breath, Thy kingdom come. They will be done. The fervid piety of Hale, and of many of the greatest British jurists, has illumined the English.

of the Chief Justices, dwells with emphasis upon their Christian To be governed by controlling religious faith and conduct. convictions implies a certain greatness of soul, and an earnest Such men can never be triflers. basis of character. realize the overruling providence of an infallible Judge, and that they cannot maintain in godlike equilibrium the Scales of Justice committed to their care without the steadying guidance of a hand divine. They have sought to be fit ministers of that great science whose highest encomium was received from the bright luminary of another profession, and to be worthy high priests of a system which keeps its seat in the bosom of God, and whose voice utters the harmony of the GEORGE A. MERCER. world.

May, 1890.

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### APPENDIX No. 2.

## TREASURER'S REPORT TO THE GEORGIA BARASSOCIATION.

### AUGUSTA, GA., May 15, 1890.

#### CASH ACCOUNT.

		CASH ACCOUNT.		
		Cash on hand, as per the last annual statement	š 717	28
		with filed	340	00
		Total	1,057	
		Less expense account herewith submitted	577	37
		Balance of cash on hand	479	91
1889.		Expense Account.		
May	8.	Washington Dessau, printing Reports Committee on Ethics	99	65
June	21.	Atlanta Constitution, advertising meetings		00
June	22.	Morning News, advertising meetings	-	00
July	15.	A. F. Cooledge, reporting proceedings		00
Augus		John W. Aiken, Secretary, postage, etc		00·
Sept.	10.	The Courant-American, bills, circulars, etc		15
Sept.	10.	S. Barnett, Treasurer, postage, envelopes and cards	8	00
Oct.	17.	James P. Harrison & Co., printing proceedings	173	17
1890.				
May	2.	S. Barnett, Treasurer, printing notes, stamps and cards	9	85
May	2.	The Courant-American, printing, etc	-	90 ·
May	2.	The Macon Telegraph, advertising meetings	6	00
May	2.	John W. Aiken, Secretary, expense account	8	50
May	2.	John W. Aiken, Secretary, expenses Hon. J. G. Car-		
-		lisle	50	00
May	2.	John W. Aiken, Secretary's salary, 1889-90	100	<b>00</b> ·
May	2.	S. Barnett, Treasurer's salary, 1889-90	100	00 ·
May	3.	The Augusta Chronicle, advertising meetings	6	<b>25</b>
May	7.	Morning News, advertising meetings	6	00
May	10.	Atlanta Journal, advertising meetings	_	<b>40</b>
May	12.	M. Slaughter, Letters of Instruction	4	<b>50</b>
		<del>-</del>		

#### INSTALLMENT ACCOUNT.

The following schedule shows the standing of the account of the Association with each member. The first column shows the amount paid the Treasurer by the several members since the last annual statement, and the second column shows the amount still due the Association. The dues for the coming year, 1890-91, will be due and payable July 1, 1890, being payable in advance, to-wit, five dollars by each member:

Adams, S. B	\$ 5	00			
Adams, A. P	-		\$	5	00
Aikin, J. W					
Anderson, Cliff					
Anderson, C. L				5	00
Arnold, Reuben				5	00
Arnold, F. A				5	00
Ashley, D. C				15	00
Atkinson, S. R.				5	00
Barnes, G. T	5	00			
Barrow, Pope	5	00			
Basinger, W. S	5	00			
Bacon, A. O					
Bartlett, C. L.					
Barnett, Samuel					
Berner, R. L				5	00
Billups, J. A	10	00			
Bigham, B. H				5	00
Bishop, J. Jr				5	00
Bleckley, L. E					
Black, J. C. C					
Blandford, M. H				20	00
Devnton, J. S				15	00
Bower, B. C					
Brantley, W. G				10	00
Brown, Julius L					
Bush, Isaac A					
Calhoun, W. L				10	00
Calhoun, Patrick		5 00			
Cameron, H. C				15	00
Callaway, E. H				5	00
Cannon, L				5	100
Chisholm, W. S		5 00	)		
Cheney, W. T				15	00
Chappell, T. J				10	00
Charlton, W. G					
Clarke, M. J					
Clifton, Wm					
Cooledge, A. F					
Cozart, W. H					

Cobb, A. J	e	<b>\$</b> 5 00
Colville, Fulton	Ψ	10 00
		15 00
County A I		10 00
Crovatt, A. J.		
Crawford, C. P.		10 00
Cummings, J. B	F 00	5 00
Cunningham, H. C.	5 00	F 00
Cutts, E. H		5 00
Dabney, W. H	5 00	
Davidson, J. S	5 00	
Davidson, Wm. T.	5 00	
Davis, A. H		5 00
Dell, J. C		10 00
Denmark, E. P. S		5 00
Denmark, B. A	5 00	
DeLacy, · · F		5 00
Dessau, Washington		
Dorsey, R. T		5 00
DuBignon, F. G		5 00
DuBose, Dudley		15 00
Dublin Gazette	5 00	
Ellis, W. D		5 00
Erwin, R. G	5 00	
Erwin, A. S		15 00
Erwin, Marion		
Estes, Claud		10 00
Falligant, Robert		5 00
Featherstone, C. N		5 00
Felder, Thomas B., Jr.		5 00
Fite, A. W		10 00
Fleming, W. H		10 00
Foster, F. G		10 00
Foute, A. M		5 00
Frazier, W. N.		5 00
Freeman, Davis		5 00
Garrard, L. F	10 00	3 00
	10 00	10.00
Ganahl, Joseph		10 00
Garrard, Wm		F 00
Glenn, J. T.	F 00	5 00
Goodyear, C. P	5 00	
Goode, S. W		5 00
Grimes, T. W	5 00	
Griggs, J. M		10 00
Gustin, G. W		10 00
Guerry, DuPont		5 00
Hammond, W. R		5 00
Hall, John I		5 00
Hammond, N. J	5 00	

Harrison, Z. D.	5	00	•	
Hammond, A. D	_	00		
Haygood, W. A			5	00
Harley, J. A	10	00		
Hammond, T. A			5	00
Hansell, A. H.		•	15	00
Hawkins. E. A				
Hamilton, Harper	10	00		
Hall, Joseph H			5	00
Hill, W. B				
Hill, H. W			5	00
Hill, B. H			20	00
Hill, C. D			10	00
Hitch. S. W.			5	00
Hillyer, George			10	00
Howell, G. A	5	00		
Hopkins, J. L			5	00
Horton, G. J			5	00
Hood, Arthur J	5	00		
Hollis, B P			5	00
Holleman, J. T.			5	00
Hobbs, Richard				
Jackson, Henry	5	00		
Jackson, W. E			10	00
Jackson, Thomas Cobb	5	00		
Jenkins, J. C			5	00
Johnson, Richard			10	00
Jones, C. C.	5	00		
Jones, A. R			20	00
Jones, J. J			10	00
Kay, W. E	5	00		
Kibbee, C. C			5	00
King, A. C			5	00
King, Porter	5	00		
Kingsberry, S. T	5	00		
Kiddoo, W. D			10	00
Lanier, R. S	5	00		
Lawson, T. G			10	00
Lawton, A. R	5	00		
Lawton, A. R., Jr	5	00		
Latham, T. W			10	00
Lamar, J. R			5	00
Levy, L. C	5	00		
Lester, R. E	5	00		
Lewis, H. T	5	00		
Leaken, W. R			5	00
Loring, C. A			5	00

Lumpkin, J. H	\$	\$ 10 00
Lumpkin, E. K	•	10 00
Lyons, R. F		15 00
Lochrane, Elgin (resigned)	10 00	
Martin, John H	5 00	
Mathews, H. A		10 00
Martin, E. W		10 00
MacKall, W. W		5 00
MacDonell, A. H		5 00
Mercer, George A		
Meldrim, P. W		5 00
Meyers, Alex		5 00
Miller, F. H	5 00	
Miller, W. K		5 00
Minis, A. J	5 00	
Mobley, J. M		15 00
Morgan, T. S. Jr		5 00
Morrison, W. E		5 00
Mynatt, P. L		5 00
McAlpin, Henry		5 00
McCord, C. Z		15 00
McDaniel, Henry D	5 00	
McDonald, J. C		
McIntyre, A. T., Jr		5 00
McLendon, S. G		15 00
McNeil, J. M	5 00	
McWhorter, H	5 00	
Newman. W. T	5 00	
Newman, E	<b>5 00</b>	
Neil, J. M	5 00	
Nisbet, Jas. T		5 00
O'Byrne, M. A		5 00
Park, J. W		5 00
Palmer, H. E. W		10 00
Pace, J. M		5 00
Payne, J. C	5 00	
Peabody, Jno		5 00
Peabody, F. D		5 00
Pottle, J. E		5 00
Proudfit, Alex		5 00
Price, W. P	5 00	
Pressley, C. P	5 00	5 00
Phinizy, Leonard (resigned)	5 00	
Reese, W. M	5 00	
Reese, M. P	5 00	
Rhett, W. H		10 00
Rountree, D. W		20 00
Rosser, L. Z		10 00

Rockwell, T. D	\$		\$ 5	
Rowell, C			•	00
Schley, Jno. 8			5	00
Sessions, W. M				
Sidell, C. W	5	00		
Sessions, M. M.				
.Shumate, I. E			10	00
Simmons, T. J				
Smith, E. A			5	00
Smith, Burton			10	00
Smith, Hoke	10	00		
Smith, Jas. M			20	00
Smith, C. C			20	00
Smith, Alex W			10	00
Spence, W. N			5	00
Stubbs, J. M	5	00		
Steed, C. P			5	00
Sweat, J. L			5	00
Thomas, L. W			10	00
Thomas, Geo. D	5	00		
Thomson, W. S	5	00		
Tompkins, H. B.	5	00		
Trippe, R. B. (deceased)	_	-	5	00
Turner, W. A			15	00
Turner, H. G			10	00
Turnbull, W. T			15	00
Van Valkenberg, J. E			-	00
Wade, Ulysses P			_	00
Weil, Sam'l			-	00
Westmoreland, T. P.			_	00
Whitfield, Rob't				00
Whitehead, J				00
Williams, E. T.				00
Wingfield, W. B				00
Wikle, Douglas				00
Worrill, W. C				00
Womack, E.			U	w
VI ULLINUE, EJ				

\$ 340 00 \$1,120 00

By mistake, the name of Mr. H. T. Lewis was, in the last report, printed H. L. Lewis. Also, Mr. W. Dessau should have been credited five dollars instead of charged five dollars.

The following gentlemen have resigned or withdrawn from the Association, and the Secretary is requested to note the fact in his roll of members, to-wit:

J. H. Alexander, J. F. B. Beckwith, H. P. Bell, Elgin Lochrane, J. H. Martin, of Talbotton, A. C. McCalla,

E. N. Broyles, .	J. B. Mitchell,
E. W. Butler,	Sylvanus Morris,
B. B. Cheney,	J. C. Newman,
J. T. Clarke (deceased),	F. M. O'Brian,
F. H. Colley,	R. W. Patterson,
A. H. Cox,	Leonard Phinizy,
B. M. Davis,	L. C. Ryan,
L. A. Dean,	E. T. Shubrick,
S. C. Dunlap,	S. B. Spencer,
J. W. Echols,	L. L. Stanford,
A. B. Estes, Jr.,	J. S. Turner,
J. W. Green,	B. H. Walton,
W. F. Jenkins,	R. B. Trippe (deceased).
W. A. Little,	

TOTAL AMOUNT OF ASSETS.
Balance of cash on hand
Total
of May, 1890. S. Barnett, Treasurer.
Examined and approved this 15th May, 1890. For Committee, Frank H. Miller, Chairman.



#### "APPENDIX No. 3.

#### REPORT OF EXECUTIVE COMMITTEE.

AUGUSTA, GA., May 15th, 1890.

#### To the Georgia Bar Association:

The Executive Committee respectfully report:

That no duties were assigned to them by the President during the year.

That various meetings were held and much correspondence had to present business for the Association. Early in the year they were promised an address from the Honorable J. G. Carlisle, who as late as the 22d of April notified the Secretary that he expected to be with us on the 15th of May. Subsequently May 5th, 1890, he was compelled by events beyond his control to recall his consent, and the Association is again without an annual address, it being too late for the committee to obtain a substitute in the place of Mr. Carlisle.

The programme as prepared by the committee has been published in the *Augusta Chronicle* and placed in the hands of the members of the Association.

The committee felt themselves controlled by the action of the Association at its last meeting, and under date of the 25th of April gave notice that a banquet would be given by the Association out of its own funds. This will take place on the evening of the second day at the Arlington Hotel in this city.

After a review of the work before the Association for its consideration, at its present meeting the committee determined that everything could be accomplished in two days, having one session on the first day, commencing at ten o'clock and ending at two, with two sessions on the second day, morning and afternoon.

If, however, the programme should not meet the approval of the Association, the hours of meeting and adjournment can be

ing to give to the Augusta bar an opportunity to extend such personal courtesies as they, collectively or individually, may see fit to extend to the Association or its members.

We have examined the vouchers of the following applicants for admission to the Association, and, pursuant to the authority vested in us under Article 4th of the Constitution, have admitted as members Samuel Lumpkin, Esq., of Oglethorpe; John J. Strickland and Wiley. B. Burnett, Esqs., of Clarke; William T. Gary, C. H. Cohen and Bryan Cumming, Esqs., of Augusta; and Edgeworth Eve, Esq., of Columbia.

The committee have also examined the vouchers of the Treasurer according to the report to be submitted to the Association at this meeting, and they have been found correct.

Respectfully submitted in behalf of Committee.

FRANK H. MILLER, Chairman.

Mr. Miller— In addition to this, Mr. President, we have received a communication from the Honorable N. J. Hammond. We had a conditional promise from him to read a paper on this occasion, and he sends this as his excuse. I take pleasure in reading it:

ATLANTA, GA., May 14th, 1890.

Hon. F. H. Miller, Chairman Georgia Bar Association, Augusta, Ga.:

DEAR SIR-You were advised on 17th February last of my anxiety to meet the Georgia Bar Association, and yet that I feared it would be out of my power.

The situation of affairs compels my presence elsewhere. The loss falls on me and not on the Association. My contribution to it would have been unimportant; while from it I would have had much pleasure and edification.

Please present my excuse and apology to the Association and say that I pray that each member of the Association may be "Fustitiæ cultor rigidi servator konesti, in commune bonus," and thus deserve the compliment of Sir Roger L'Estrange none the worse for being over two centuries old, viz.: "He (the true lawyer) is the delight of the ccurt, the ornament of the bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit, and the oracle of his country; and when death calls him to the bar of heaven, by a habeas cum causis, he finds his judge his advocate, nonsuits the devil, obtains a liberate from all his infirmities, and continues still one of the long robe in Glory."

With highest esteem of you personally, I am yours, etc.

N. J. HAMMOND.



#### APPENDIX NO. 4.

## REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM

MR. PRESIDENT — The Committee on Jurisprudence and Law Reform make no suggestions upon its important general legislation of the last session of the General Assembly. Sufficient time has not elapsed to afford a practical test of the new laws. This -course seems proper for another reason. The Association has now pending an elaborate and valuable report submitted by our predecessors at the last annual meeting, which was specially printed and distributed amongst the members in order to be intelligently considered at this meeting. That report recommends radical changes in the matter of local and special legislation, and other important modifications of existing laws. The -consideration of these matters will occupy all the time the Association can devote to the report of one standing committee. Inasmuch as the report, with the dissenting views of individual members of the committee, has been in the possession of members of the Association long enough for every one to investigate the subjects discussed and the views submitted. We merely call your attention to it for such action as may be deemed expedient, without a formal expression of our opinion.

> HENRY D. McDaniel, John L. Hopkins, Joel A. Billups, N. H. Dabney, B. B. Bomer.

#### APPENDIX No. 5

# EXCESSIVE LEGISLATION A CAUSE OF JUDICIAL INEFFICIENCY AND AN ELEMENT OF POLITICAL WEAKNESS.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION,

By HON, CLAUD ESTES.

AT ITS ANNUAL MEETING AT AUGUSTA, MAY 15th, 1890.

Even the casual observer of the times in which we live, tosay nothing of the student of history, must have been led oftentimes to the contemplation of the fact that we are the most industrious and extensive law-makers in Christendom.

It is doubtful if there ever has existed a people amongst whom there was a greater desire for more laws The public mind seems all the while to be harassed with the thought that we need legislation. Nearly all the common and State law which we derived from the Mother Country has been superseded by our own enactments. But few of our own statutes. have escaped the despoiler's art. Veneration for age and respect for the wisdom of the past have not been sufficient to secure exemption from repeal or modification. Nothing has sofar interposed to stay the onward march of law-making. It has invaded every branch of the law, criminal as well as civil. Pleading, practice, evidence, have all alike been subjected tothe experiment of the reformer. Precedents, sanctified by the lapse of time and made honorable by the wisdom of ages,. have been swept away in a twinkling. If constitutional barriers seem to confront the movement, then Constitutions must be changed or abrogated and new ones adopted-thus the work goes bravely on.

Really it would seem that it has become a disease, that an.



some dreadful, not to say mortal, ailment has attacked the understanding. This disease, for lack of a better term, we will denominate, cacoethes leges ferendi, which, being liberally interpreted, means, "an itch for making laws."

To attempt to diagnose this disease would be a difficult task. It seems to have originated about the close of the late Civil War, about the time that everybody discovered that everybodyelse had made a great mistake, and that our country had reached a state of political and financial ruin.

The prevalence of such a malady just after the close of the great Civil War was not a matter of astonishment. destruction of our institutions, the loss of property, the disruption of all our former ties and associations and the closing of all our avenues of trade and business constituted such a calamity as had rarely ever befallen a people; and it was no wonder that in such an emergency, such a state of disorganization, uncertainty and impending ruin, our people should turn their eyes in any and every direction from which any, even the faintest, ray of hope afforded promise of better things. truth it was apparent that certain changes in the laws of the land were necessary in order to adapt ourselves to the new order of things. Changes also in our State Constitution were demanded by the Federal Government. In a little while it became apparent to the careful observer that a new danger confronted us. The demand for new constitutions, new laws, new and untried methods of judicial procedure, became almost The malady invaded every department of the Government. Laws impairing sacred rights, solemn obligations, sanctioning great wrongs and civil injuries, and violative of the immutable principles of natural justice and common right, were hastily enacted. The Executive Department readily undertook the enforcement of these enactments, and even the judiciary, that palladium of right and the repository of justice, by solemn adjudications, held them valid and binding.

The impartial student of history, while he must ever look upon these mementoes of a misguided sympathy for misfortune and ruin, as so many blurs upon the hitherto bright escutcheon if not excuse, these errors, on the ground that these were trying times, and the errors were believed to be in favor of the poor, the needy, the oppressed, whose condition and circumstances were not of their own creation.

It is not of the evils of those times that I wish specially to speak to-day. I merely mention them incidentally as the probable origin of that train of evils from which a fourth of a century has not been sufficient to relieve us, if indeed we have not grown gradually worse.

I deem it useless, in this presence, to adduce proof of the existence of the evil of which I speak.

A comparison between the first Code of Georgia, which took effect January 1st, 1863, and which embodied a very large amount of matter rendered inoperative by the results of the war, with the last codification of our statutes and the six volumes of Acts since the Code of 1882, will show at a glance how our laws have multiplied, not to mention the many changes, modifications, and amendments (save the mark!) that have been made in those portions or sections which have not been repealed, but in some form or other are yet retained.

Now what is the result of all this mass of legislation? I have already been speaking of it as an evil. I here aver that it is such; an evil too that demands the serious consideration of this Association, and of every other law-abiding citizen of the State.

One of the serious consequences of this constant multiplication of laws, this ever-increasing mass of legislation, is that it tends to lessen the efficiency of the State Judiciary and toweaken the effect of judicial decisions.

No man, I care not how learned he may be in all that goes to make the profound jurist, can be presumed to know the laws of Georgia. Precedents are of little avail; text-books afford but meagre aid; adjudications of other courts, State or Federal, rarely can be appealed to for assistance.

Every year brings its additions, its changes, its modifications, its repeals and its re-enactments.

As soon as precedents seemed to be established, or principles

huge upheaval he overturns the whole structure, and involves the whole subject in chaos and confusion. Thus the learned judge must become a law student, and must readjust all his bearings in order to navigate this untried sea, only to be wrecked again just as he imagines he is entering the harbor of certainty and settled law. The judiciary, therefore, is all the while wandering in a pathless wilderness, and endeavoring to mark out for the first time a track in which no one has before Is it any wonder then that we hear of tired, overworked judges? Is it any wonder that we hear of distinguished and overruled cases? Is it any wonder that everybody is in doubt as to what the law is? It is related of the elder Judge Underwood that, upon a certain occasion, he was asked as to the political status of his son, Judge John W. H. Underwood, in a certain very heated campaign, when the old Judge replied. "Well, really, I can't say: I haven't seen him since breakfast." How often do we find it about as difficult to tell what the law of Georgia is, unless we have read the last daily paper,

For these and similar reasons the adjudications of our courts do not stand as high in the estimation of other courts as they should, and for the same causes they do not command the high respect and acquiescence from the bar of our own State as the utterances of a court of last resort should do.

In the next place the whole people have not the high regard for law and order that should characterize the citizenship of a great commonwealth. There should be no doubt, no uncertainty as to what the law is nor as to what judicial construction will be. The very bulwark of liberty and the palladium of Right and Justice is the Judiciary—but to be such it must, by its efficiency and the clearness and accuracy of its adjudications, be able to command the respect and admiration of the wise, the prudent and the just.

It is essential to law. Nay, it is its very inherent nature, that it should be certain, permanent, uniform, universal. A transient, short-lived enactment, promulgated for experiment, cannot have the binding force of law nor command that respect and obedience from the people, without which it is impossible

for society and government to answer the proper ends and purposes of their creation. Thus the very foundations of society are endangered, the tenure by which property is held is fickle; and life, liberty, health and reputation depend largely upon the whim of the legislative tyro. Who doubts that the body politic is sick? Who questions that a deadly malady is preying upon the vitals of our political and civil structure?

Is there no remedy? Does not the patient grow worse and the disease take deeper hold every year? One hundred days of the three hundred and sixty five consumed in making laws! Still not enough! Repeal some, modify others, re-enact others. Before the people and the courts have had time to test the merits of a law, it is modified or repealed.

Would it not be well for this Association to enter its solemn protest against this great evil, or shall we supinely sit in silence until every law that is worth the name has been repealed or emasculated, and every right that is worth preserving is swept away.

When laws become to be regarded as the mere utterances of the politician and the demagogue, and rights are disposed of as the figures on the chess board; when high crimes are winked at, and courts are impotent to check men's prejudices and passions, then indeed, it is time to call a "halt," for the remnant of liberty will scarcely be worth preserving.

#### APPENDIX No. 6.

## REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

It is made the duty of your committee, by the By-Laws of this Association, to examine and report what changes it is expedient to propose in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

At the annual meeting of this Association in the year 1888, a report was made by a former committee, of which Honorable George A. Mercer was Chairman, setting forth the defects in the present law on this subject, and giving the reasons why there should be a change. This report is full and able, and sets forth clearly and concisely, and with logic that is unanswerable, the facts going to show that our present law, at least in its practical operation, is totally inadequate to meet the absolute necessities of the case. No man can give a good reason why there should not be a change, and every lawyer of any standing and experience will readily concede that there should be. It has nothing to commend it to any one except to the young man who is in such haste to become a practitioner that he is willing to enter upon the duties of that responsible calling with insufficient preparation.

But it is a matter of much difficulty to make such suggestions, or to frame such a law, as will meet the exigencies of the case and at the same time be so simple and direct as to commend itself to the law-making power in such a way as to insure its passage. We have a practical demonstration of this difficulty in the fact that the bill prepared by the able committee before referred to, which accompanied their report to this body, and which was introduced into the General Assembly of Georgia, was defeated when put upon passage. That bill was ably con-

to have had anything in it that should have caused its defeat, but nevertheless such was the case. Your committee has learned that the chief objection urged against it was that it required applicants to submit to a written examination. While we think this was an admirable feature, if it would have been practicable, we are inclined to think that it would have been difficult to find a committee, every time, who would have given sufficient time and attention to the framing of the written questions.

Your committee, not despairing on account of the defeat of this bill, and unwilling to lose the benefit of the admirable thought and work that have been bestowed on this question by former committees, and especially the one to which allusion has been made, have undertaken to frame another bill, which they present herewith, and which they sincerely hope may not be considered too simple and modest in its requirements to meet the approval of this Association, nor too cumbersome and exacting to commend itself to the legislative mind.

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W. R. Hammond, Chairman, W. M. Reese, A. H. Cox, C. C. Jones, Jr., Andrew J. Cobb.

Committee.

A Bill to be entitled an Act to repeal sections 391 to 396 of the Code of 1882, inclusive; and to substitute in lieu thereof certain other provisions prescribing the mode of admitting attorneys to practice law in the courts of this State; and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, That sections 391 to 396, inclusive, of the Code of Georgia, of 1882, which sections prescribe the mode of application for admission to practice law, the evidence required to be produced to the court for that purpose, the substance and manner of the examination of the applicant, the duty of rejecting unqualified applicants, and the mode in which applicants are to be admitted if found duly qualified, be repealed.



be substituted:

(a) For the purpose of admission one must apply, by petition, in writing, to the judge of the Superior Court of the circuit in which he has read law, and must show

(1) His age.

(2) His citizenship or otherwise.

(3) That he is of good moral character.

(4) That he has accomplished a thorough course of reading and instruction and has attained proficiency in the various branches of the law, as hereinafter prescribed, under the supervision and direction of some member of the bar of that circuit, of good character and professional standing.

(b) If practicable for him to do so, he shall produce the certificate of such attorney that the facts stated in said petition are true and if impracticable shall produce other evidence sat-

isfactory to the judge.

(c) He shall be examined, in the manner hereinafter prescribed, touching his knowledge.

(1) Of the principles of the common and statute laws of England of force in this State.

(2) Of the law of pleading and evidence, and the principles of equity and equity pleading and practice, and of pleading and practice under the special laws of this State, in reference to the union of legal and equitable rights.

(3) The revised Code of this State and the statute law subsequent thereto, the Constitution of the United States and of this State, and the rules of practice in the superior courts.

(d) Said applicants shall be examined at the time and in the manner following: The judges of the superior courts, at least once in each year, if there be any applicant, and oftener, if necessary, shall appoint a special time and convenient place, in their respective judicial circuits, of which due notice shall be given for at least thirty days, for the examination of applicants; and they shall at the same time appoint a committee of five lawyers, who possess special qualifications for the work on account of their skill and learning, not less than three of whom shall act, whose duty it shall be to conduct said examination, in

a character as to thoroughly test the knowledge of the applicant of the various subjects and branches of the law as herein specified, and no applicant shall be admitted until said committee shall so recommend after a thorough canvass of his merits made in special session with the presiding judge after said examination shall be completed. If the applicant shall not be fully ready for admission, it shall be the duty of said committee to direct further preparation and study in such branches as they may deem necessary. The judge shall have power to adjourn the committee from day to day, and to such time as may be necessary.

(e) If the committee shall be thoroughly satisfied that the applicant has exhibited such a degree of proficiency as in their opinion shall fully qualify him for the commencement of the practice of law, they shall so report in writing to the judge and if he shall approve said report, he shall pass an order in term or vacation, that the applicant has been duly examined and found to possess the requisite learning and ability, and has otherwise complied with all the requirements of the law, the clerk shall issue to him, on his taking the oath prescribed by law, and on payment of the fees and costs, a license to plead and practice law in the superior courts of the State. This order must be entered upon the minutes of the court.

SEC. 3. That all laws and parts of laws in conflict with this. Act be repealed.



#### APPENDIX No. 7.

#### THE UNANIMITY RULE IN MAKING VERDICTS.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION, By HON. FRANCIS D. PEABODY, of Columbus, Ga. AT ITS ANNUAL MEETING AT AUGUSTA, MAY 16, 1890.

The recent trial of a case in this State, which from the prominence of the parties, attracted very general attention, and in which, although the jury was out over eighty hours, eleven of the jurors stood from the first for acquittal, and one juror, not for conviction, but for a minstrial, has suggested a consideration of the unanimity rule in making verdicts.

At the very outset, let me say that, upon an investigation of this subject, I have found that many of the doubts which I have felt as to the wisdom of this rule, and many of the arguments which had suggested themselves to my mind, as to its indefensibility, either on principle or in practice, had been felt and urged by others; and I have drawn from all sources available for argument against what I consider a most pernicious rule.

It is said that the rule of unanimity did not obtain until the fourteenth century, and that it grew out of the practice of having the jury composed of the witnesses to the transaction under investigation, it being supposed that the jurors who refused to concur in a verdict, after the rest of the jury had related their version of the affair, were wilfully disregarding the truth, and were thereby virtually in contempt of court; and very vigorous measures were adopted to persuade the recalcitrant jurors to make a verdict.

But whatever may have been its origin, and for how long it may or may not have been the rule, it is to-day, by implication, at least, a part of the organic law of the land.

Paragraph 1, Section XVIII. of the Constitution of Georgia, of 1877, is as follows: "The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate." Although the clause, "as heretofore used in this State", which was in the Constitution of 1798, has been omitted from the later Constitutions of Georgia, still it would appear that unanimity is one of those common law incidents of "trial by jury" as is contemplated and embraced in the constitutional provision.

In Judge Cooly's work on Constitutional Limitations, section 319, he says: "Many of the incidents of a common law trial by jury are essential elements of the right. \* \* \* \* \* \* \* \* \* The jury must unanimously concur in the verdict. This is a very old requirement of the English common law, and it has been adhered to, notwithstanding very eminent men have assailed it as unwise and inexpedient."

Mr. Justice Miller, of the United States Supreme Court, in a paper on the system of trial by jury, speaking to the third clause of section one of the Constitution of the United States., providing for jury trial, says: "Whether the Congress of the United States can, by law change the number necessary to constitute a jury, or make valid a verdict by any less than the whole number of twelve, which is the established number for the trials of issues. has never been decided by the Supreme Court of the United States. It has been decided on some of the circuits that a trial jury, ex-vi. termini, means a jury of twelve men. Whether this would be held to be so in the face of a congressional enactment fixing the number necessary to constitute a jury at less than twelve, I am not prepared to say. It is a doubtful question, also, whether assuming that a jury is necessarily composed of twelve persons, Congress may by statute, provide that the concurrence of a less number than the whole shall constitute a verdict."

Judge Nisbit said in the 6th Ga. 465: "The unanimous agreement of the jury is necessary to make their verdict legal. The verdict is the judgment of twelve men, freely rendered, upon the issue submitted to them for trial. Whether it be right upon principle, or prudent as to expediency, to require

unanimous verdicts, are questions about which much may be said both affirmatively and negatively. \* \* \* \* \*."

So much, then, for the status of the rule in our law.

Is it wise? Is it expedient? Is it best? Should it remain as it is, or should it be so changed as to allow a valid verdict to be rendered by some number less than the whole of the jury?

First, then, on authority, so to speak. Emlyn, as early as 1730, in his preface to the second edition of Howell's State Trials, makes an eloquent appeal for the abolition of the rule.

Haldam, in the supplemental notes to his "Middle Ages," designates it: "A preposterous relic of barbarism."

The English common law commission of 1831 condemned the rule in positive language; and suggested that the jury should not be kept in deliberation longer than twelve hours, unless at the end of that period they unanimously agree to ask for further time; and that, at the end of the prolonged time for deliberation, if nine of them concur in a verdict, it should be taken.

Dr. Francis Lieber, in his work on "Civil Liberty and Self-Government," forcibly condemns the rule requiring unanimous verdicts.

Bentham, in his "Essay on the Art of Packing Juries," says that the rule could not have been the work of calm reflection, working by the light of experience, and that it is "no less extraordinary than barbarous."

Judge Cooly, in his edition of Blackstone, says that it is "Repugnant to all experience of human conduct, passions and understandings," and that "it could hardly, in any age, have been introduced into practice by a deliberate act of the Legislature."

Ex-Governor Koener, of Illinois, speaks of it as: "the illogical unanimity system, which has become a great source of corruption and consequent denial of justice."

Governor Carpenter, of Iowa, in a message to the Legislature called it "an antique absurdity, which has too long fettered the administration of justice."

In 1876 a committee of the Wisconsin Legislature reported in favor of submitting a constitutional amendment, empowering a less number than twelve to return a verdict.

Mr. Justice Miller, in the paper already quoted from, after giving the reason on which his conclusion was based, says: "I am therefore of the opinion that the system of trial by jury would be much more valuable, much shorn of many of its evils, and much more entitled to the confidence of the public, as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict; "and said: "I would not, myself, be willing that a bare majority should be permitted to do this."

Judge Caldwell, of the United States Circuit Court Bench, in a most luminous paper on this subject, and from which I will again quote, takes the position broadly that a simple majority of the jury, in all cases, should render the verdict.

To the ultra conservative, let me say that jury verdicts, made by a less number than the whole, is no experiment. But that on the contrary nowhere outside of England and the United States is the verdict required to be unanimous.

From a carefully written article on the subject under discussion, by Mr. Sigmund Zeisler, I draw the following citations, showing the state of the law in some other countries.

In Scotland, trial by jury, in criminal cases, is of ancient origin. The jury consists of fifteen, a simple majority of whom makes the verdict.

Trial by a jury of twelve, in civil cases, was introduced into Scotland by act of the British Parliament, in comparatively modern times, and the verdict was required to be unanimous in such cases by the terms of the original Act. This requirement of unanimity created so much dissatisfaction that, in 1854, it was abolished by an Act which provided in its stead, that, after six hours of deliberation, a verdict might be taken from three-fourths of the jury.

The Code of Criminal procedure of 1882, of British India, provides as follows: "If the jury are not unanimous, the judge may require them to retire for further deliberation. After such a period as the judge considers reasonable the jury may deliver their verdict although they are not unanimous." Also, "When, in a case tried before a high court, the jury are unanimous in their opinion, or when as many as six are of the

shall give judgment in accordance with such opinion."

By the Code of the Bahama Islands of 1848, it is provided that in all criminal cases, other than capital, and in all civil cases, a valid verdict may be returned by two-thirds of the

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In most of the countries of Continential Europe trial by jury is only had in criminal cases. The jury does not find a general verdict, but simply answers questions, formulated by the court, with reference to the guilt of the prisoner, and the existence of aggravating or mitigating circumstances. The jurors, after deliberation, vote upon each question separately, by depositing a ballot "yes" or "no." Only one ballot is taken upon each question. For a decision adverse to the defendant upon the principal question of guilt, and upon questions with reference to the existence of aggravating circumstances, a simple majority, only, is necessary and sufficient in the countries of France, Italy and Germany. In Austria at least eight votes are required and are sufficient for a conviction, and for an affirmative answer to aggravating circumstances.

Even in the United States there are three States that have so far broken loose from the thraldom of precedent as to embody in their Constitutions the provision that in civil actions a verdict made by a three-fourths' majority shall be valid. These States, and all honor to them, are California, Nevada, and Texas.

But it is not so much what the state of the law in other countries is that we are to consider, as what it should be with us. The unanimity rule is utterly opposed to the genius of American institutions, and does not obtain in any other branch of the government, nor in any other branch of the judiciary, save the jury.

The argument of Mr. Justice Caldwell, already referred to, on this point, is so clear, so forcible, so unanswerable, that to abridge it would weaken it, and I therefore quote in extenso. He says: "Our government is founded on the rule of the majority, and its continued existence is dependent on a constant and cheerful obedience to that principle. A majority of one

States, and fix the public policy of the Nation, including the issue of peace or war. A majority of one in the pivotal State of New York, which casts a million and a quarter votes. will determine the political complexion of the electoral college and thus in effect elect the president. Senators in Congress are elected by a majority vote. Governors, members of Congress, judges, members of the legislature, and in a word all elective officers, can be elected by a majority of one vote, in a poll of thousands, or of hundreds of thousands. The Acts of Congress, and of the State legislatures, are passed by a majority vote. Why not require them to be passed by a unanimous vote? A law that furnishes the rule of decision for all cases is of infinitely more importance than the finding of a jury on an issue of fact, in a single case. To apply the rule to legislative bodies would, it is said, put it in the power of a single captious or querulous member to defeat the most meritorious and necessarv bills, and even the ends of government itself. And who can explain why the rule does not have the same disastrous effects when applied to a jury, in the administration of justice? The president and all other officers of the United States, and the governors and all other State officers, may be convicted of high crimes, and removed from office by a two-thirds' vote of the United States and State Senate, respectively, the tribunals answering to a jury that tries them.

While a two-thirds' vote will convict the highest officers in the land of high crimes and remove them from office, it requires a unanimous vote to convict a thief or murderer, or acquit an innocent man.

The historic dissenting juror is equally an aid to the guilty and a menace to the innocent. At one time he defeats the conviction of a guilty man, and at another time he prevents the acquittal of an innocent one. And above all why should the rule apply to juries and not to judges, when trying the same case on the same issues? An issue of law, or fact, or both, submitted to a court composed of three or more judges.



States Circuit Court is held, as it may be, by two judges, and they differ in opinion in the trial of a cause, on the law or facts, judgment is rendered in conformity to the opinion of the presiding judge or justice.

The Supreme Court of the United States is composed of nine judges, and the verdict of the majority decides the case. considerable number of the cases in that court, and usually those of the greatest consequence, are decided by a bare ma-A few such cases of recent occurrence may be men-A case involving title to property in Hot Springs, worth a quarter of a million dollars, was decided by a bare majority, the court standing five to four. The great telephone case, involving millions of dollars, and the title to one of the greatest inventions of the age, and which turned mainly on issues of fact, was actually decided by a minority of the whole court, one of the judges being dead, and one disqualified, the case was decided by the opinion of four judges against Another case involving grave constitutional questions. affecting interstate commerce, and the police power of the States, was decided by a bare majority of the eight judges who participated in the decision."

Replying to the objections urged by Mr. Justice Miller to a verdict from a bare majority, and quoting the learned jurist's dictum: "That judges are not pre-eminently fitted over other men of good judgment in business affairs to decide upon mere questions of disputed facts;" and noting the coincidence that the learned judge himself was a member of that tribunal which determined the title to the office of president of the United States, and that his vote turned the scale and made the majority of one, not only in that instance, but in each of the cases just cited he goes on to say:

"It is not perceived how a court could refuse to repose confidence in a verdict of a majority of a jury, and at the same time itself act upon and ask the parties and the country to repose confidence in its own decisions rendered upon a bare majority of its members.

The public and the parties would repose confidence in a ma-

a majority judgment of a court. A majority verdict would command the confidence of the people because it would be in harmony with the rule by which they are accustomed to settle all their political and business differences.

The delay, expense and uncertainty in settling a controversy in court, which is in part attributable to the rule requiring a unanimous agreement of the jury, is such that the commercial and business men of the country have, by common consent, adopted their own methods of settling their differences out of court. The most common method is by arbitration, and uniformly a majority of the arbitrators are empowered to make the award.

That the business world would repose confidence in the majority rule is proved by the fact that they have already adopted it for themselves, in the tribunals of their own creation.

As to the parties, the successful party never complains, and the beaten party is equally unhappy whether beaten by the unanimous or divided opinion of the court or jury. That man thinks weakly and delusively who supposes that human wisdom can devise any method of trial by which the beaten party will applaud his defeat. \* \* \*

The judgment of a majority of the members of a court is accepted as the verdict of a majority of the jury ought to be, because the case must be decided, and because it is impossible to make a body of men think alike where there is fair room for difference of opinion.

Besides a difference of opinion gives assurance that the questions at issue, whether of law or fact, have been carefully considered.

Many of the most memorably erroneo us and overruled judgments of courts of last resort were concurred in by a full bench, and many verdicts which were the result of the unanimous agreement of the jury, at the very commencement of their deliberations, have been set aside. Unanimity of opinion produces intellectual torpor. It is only by conflict of minds that light is evolved, and the truth discovered. For this reason the opinions of courts, where there is a sharp dissent, are commonly regarded as the safest and soundest opinions to be found in the books; and confidence could be reposed in majority verdicts for the same reasons. No human institution can make any



the task of devising a method of trial by which the right shall continually prevail. If unanimity was tantamount to infallibility, there would be reason in the rule; but unfortunately there is no more infallibility in twelve men than in seven. A judgment by a court rendered by a bare majority is of much greater moment than the verdict of a jury; for it becomes a rule of decision in all other cases, and the verdict of a jury only binds the parties to the cause in which it is rendered.

If there is virtue in unanimity, then the people should have the benefit of it from the courts as well as the juries.

Why not require the Supreme Court of the United States to be unanimous in its verdicts, and when the venerable judges composing it differ in opinion, imprison them in their conference room without beds or blankets, with a guard at the door to prevent their escape, as though they were a band of felons. That is the way venerable and gray-headed jurymen are treated when they honestly differ in opinion about a case. Are the honest and respectable men composing our juries entitled to less respect and consideration, when discharging their duty, than the judges are when discharging precisely the same duty? He will be a bold man who answers this question in the affirmative. If, as some pretend, the law is a science that can be known to those who seek to know it, why not compel the judges to read the books until they find it and agree about it? And if, as is very mistakenly claimed by some, judges are better qualified than juries to determine issues of fact, why should the law not require a unanimous verdict from them on such issues? The ingenuity of man cannot invent a reason for applying the rule of unanimity to juries and not to judges. If its application to either could be justified, it would be to the judges. Certain it is that it ought to be applied to judges, or abolished as to juries. As it stands it makes an invidious distinction between judges and the citizens who are called to act as jurors, which is undeserved, and which honest and independent freeman ought not to submit to.

If the imprisonment and other means resorted to by the courts to compel juries to agree were practiced by one citizen on another to induce him to assent to demands made upon him, it would be a crime, and any instrument obtained by such means would be void. A verdict obtained from a jury by duress

the penitentiary. What is the process? If jurors are unable to agree they are called into court and instructed that it is their duty to agree, and, following the language of approved charges, the court tells them in effect that the minority ought to yield to the majority, and that the whole jury will be imprisoned until it does. This is said with some circumlocution, and in courteous language; but in plain English that is what it means. What virtue is there in a unanimity procured by such methods?

The rule makes jury duty a terror to the citizen who knows that an honest difference of opinion between members of the jury, or a stupid or stubborn or "fixed" juror, may result in his imprisonment for an indefinite period, under worse conditions than those that surround the felons in our jails and penitentiaries; for they are provided with comfortable beds, while jurors, as a rule, are cooped up in a small and poorly ventilated room, with the benches and floor for beds. This is humiliating to the citizen and degrades and dishonors the administration of justice by making verdicts depend on the physical power of endurance of jurors. and not on their deliberate judgment. In the contest of physical endurance the minorty often conquers. In such a contest brawn and not brain makes the verdict. It is practically the trial by combat in another form. In a physical aspect, it is more than a hardship; it is dangerous to health and life; instances are not wanting where death has ensued from such treatment,

Disguise it as we may, the question at last is: Shall the majority or minority rule in the administration of justice? Where the majority do not rule the minority must. Unanimity is impossible in many cases, and in those cases, the minority, it may be a single man, rules and stops the wheels of justice. \* \* \*

To sum up: The rule encourages crime; it is the hope of the guilty, and the trust of dishonest and litigious suitors; it obstructs and delays justice; it multiplies lawyers' fees, and burdens suitors with costs, and the citizen with taxes; it degrades and dishonors the citizen by treating him worse than the felon he is called to try; it makes jury service disagreeable and dangerous; it often enables criminals in cities, where that class abounds, to escape conviction by smuggling one of their number on the jury; it is an incentive to bribery and corruption; it is a fertile source of false verdicts, and a relic of barbarism and superstition that ought to be abolished.

After two or three hours' consideration of a case, a majority of the jury should be permitted to return a verdict. As a rule, a verdict reached after three hours' deliberation is not the result of new light, or a better understanding of the case, but jurors mechanically assent to it, to escape the worry and hardships which would be entailed upon them by adhering to their convictions.

It is illogical and unsound to make any distinction between civil and criminal cases. That this rule should be continued to this day, in a country, the fundamental doctrines of the constitution and all of the institutions of which rest on a diametrically opposite principle, shows how illogical and inconsistent men and governments can be. It is to be attributed to the fact that so many men assume that the state of things they are used to is the necessary state of things.

They seem to believe in the principle that "whatever is, is right"—a maxim that would indeed foreclose all inquiry, but for the fact that it includes the logical and troublesome consequence, "that nothing that ever was, was wrong."

It is hard to break away from old usages, however injurious; and old opinions, however groundless, are not easily overcome.

It has been truthfully said that there is no enemy to the present like the past, and that it is through constant appeal to our ancestors that we transmit wretchedness and wrong to our posterity.

\* \* But error is not rendered inevitable by its antiquity. "Time sanctifies nothing without merit."

In the paper already referred to, Mr. Zeisler says: "The absurdity of the requirement of unanimity is that it gives one mind weight equal to that of eleven; its unsoundness, that eleven honest and intelligent men may be defeated by one fool or crank; its moral deficiency, that it constantly holds out a premium to the professional jury manipulator."

I apprehend that none but the very innocent, or the very corrupt, will deny that jurors are sometimes bought. Bentham says: "Any one juror, gained and properly armed, armed with the necessary degree of patience, suffices."

It is sufficient to say on this point that where one corrupt juror is sometimes found on a jury, to the credit of mankind be it said, that seldom could as many as four be found on one jury, the number necessary to be "gained" if a majority of three-fourths only were required. This is a mathematical argument that must necessarily address itself to the common sense of of every man.

practical defects of the unanimity rule is the enormous expense of new trials growing out of mistrials, which result from there being either a fool, or crank, or knave, on the jury, whorefuses to concur with the rest in their verdict.

This also often follows from perfectly honest conviction on the part of the minority, or the singled issenting juror; in fact the more honest the juror is in his position, the harder will he be to move. The construction of men's minds are no more exactly alike, than is the color of their eyes, or the expression of their countenances; all alike in general, but totally different in detail.

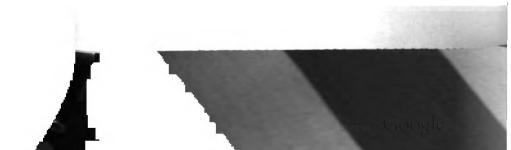
I do not believe that any twelve men living could be found who, if called upon to narrate the facts relative to any given circumstance, of which they were all eye witnesses, would, or could, tell it exactly the same. The Gospels are a familiar illustration of this. All alike and all different. Their very variance goes to their credit!

I firmly believe that if the identity of the resurrected Saviour had been at issue before the twelve apostles, before Thomas had seen and put his finger in the wounds, although the eleven were satisfied, that Thomas would have "hung the jury." Thomas just could not believe, nor was he any the less pure and better than the other eleven. He was in no wise responsible for the structure of the grey matter of his brain, which imperatively demanded more evidence on which to base belief than did that of his fellows.

A familiar illustration of the diversity of conclusions from the same premises—a different verdict on the same evidence—is the great number of religious sects that have grown out of the teachings of the Bible. All alike and all different. Thousands have been willing to go to the stake in vindication of a belief drawn from the Bible, while others, equally as pious and drawing their beliefs from the same source, would have gone equally as cheerfully in support of a diametrically opposite view.

Then, why persist in punishing parties, witnesses, judges, taxpayers and jurors for the moral obliquity of the dishonest juror, for the mental obliquity of the fool and the crank, and for the mental structure of the honest juror, who, like Thomas, cannot believe until he puts his finger in the wound?

DeToqueville said, over fifty years ago: "I do not know whether the jury is useful to those who are in litigation, but I am certain that it is highly beneficial to those who decide the



litigation; and I look upon it as one of the most efficacious means for the education of the people which society can employ."

The history of the development of the American Republic, for the past fifty years, bears evidence of the wisdom of the view taken by the great Frenchman, and this view has been concurred in by roost of the great law writers since his time. words, it is the benefit which the jury receives, rather than the benefit it confers which makes jury trial so desirable in a government like ours. But any benefit which is received at the price of the loss of self-respect comes very dear. No juror who ever had an honest conviction, and gave it up in order that a verdict might be made, or for considerations of personal convenience, but that stained his character in the eves of his fellows. and stabbed his own self-respect. Besides, the juror who gives up his own opinion. and joins in the verdict, from what amounts to compulsion, not only stultifies himself, but places himself in a false light before the world. By this verdict he stands as the champion of a position, which, in his secret heart, he utterly condemns. What a happy Under a rule allowing some number less than the condition! whole to make the verdict, the jurors who were in the minority from honest conviction, could vote that way, and they would stand before the world as the exponents of their side of the case and not of the side which they condemned. The minority jurous have as much of an inherent right to go on record, in support of their honest convictions, as has the minority of the United States Senate, on the call of the ayes and noes, to go on record in support of their views of the case, in an impeachment trial; or as have the minority of the justices of an appellate court, to place themselves on record, in support of their views by filing dissenting opinions.

I cannot close this paper without relating an occurrence that came under my personal observation, in my own circuit, since my investigation of this subject began. A civil case was on trial. The case had been given to the jury, and they had been out with it all of one night, and late in the afternoon of the following day came into court and stated that they could not agree. The judge sent them back to their room. At that time they stood seven for the plaintiff and five for defendant. When sent back, they unanimously agreed, not upon a verdict, but that they would not spend another night in that uncomfortable room. Various propositions were made whereby they were to reach a verdict. One was to draw straws; one for those in favor of the defendant to match their

combined weight against that of the combined weight of those infavor of the plaintiff, and the side showing the greatest avoirdupois to take the verdict.

This last proposition failed for the reason that there were some heavy weights among the five for defendant, and although in the minority in numbers, the plaintiff's seven were afraid to risk the test. Finally they did agree that the foreman should spit upon a shingle, and toss wet or dry to decide the rights of the parties. This was done, and the five won, and the verdict was rendered for the defendant accordingly, and the jury returned to their comfortable homes, and the strength of the plaintiff's case, matched against the odds of chance, availed him not! This may sound very ridiculous, but it is strictly true. This is one way to get around the unanimity rule, and perhaps even lawyers would be astonished to know how often the verdict is reached in some such manner.

As high as I value the contribution of Justice Caldwell, on this vital question, there is one point on which I most respectfully, but emphatically dissent from him. Referring to how this evil is to be remedied, he says: "The people, aided by that lever that moves the world, the press, must carry forward this reform. If left to the lawyers it will not be done. A Bourbon is one who adheres to everything that is old, and rejects everything that is new. In the matter of the common law, the bar is organized Bourbonism."

This assertion is not supported by the history of law reform. Who, but that most splendid lawyer of his time, Lord Brougham, gave utterance, in the course of a six hours' speech, in Parliament, on law reform, to such noble sentiments as these: "It was the boast of Augustus \* \* \* that he found Rome of brick and left it of marble; a praise not unworthy a great prince. \* \* \* But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book; left it a living letter: found it the patrimony of the rich; left it the inheritance of the poor: found it the two edged sword of craft and oppression; left it the staff of honesty and the shield of innocence."

And Lord Campbell, his not too partial biographer, is forced to say, in speaking of this world-famous speech; and of its effect: "In consequence two royal commissions were issued, one for the proceedings in the common law courts, and the other for the law of

real property. The reports of these commissions were followed by various acts of Parliament, which have most materially improved the judicial institutions of this country." \* \* \* "Without his exertions the optimism of our legal procedure might have long continued to be preached up, and fines and recoveries might still have been regarded with veneration."

In Georgia, the history of law reform would be the history of a multitude of distinguished lawyers. From the inception and adoption of our Code, down to the uniform procedure act of 1887, nearly every measure looking to the improvement of the form and substance of our jurisprudence, was conceived and carried through by lawyers.

And speaking now to the legislature, through the ear of organized progress, the Georgia Bar Association, I offer the following amendment to Paragraph 1, Section 18, of the Constitution of Georgia: "Provided, That the Legislature may enact that some number of the jury, less than the whole, may make and return the verdict in all cases." So that said paragraph, when amended, will read as follows: "The right of trial by jury, except where it is otherwise provided in this constitution, shall remain inviolate: Provided, That the legislature may enact that some number of the jury, less than the whole, may make and return the verdict in all cases."

# APPENDIX No. 8.

# DISSOLUTION OF CORPORATIONS BY REPEAL AND FORFEITURE.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION
BY HON. FRANK H. MILLER,
AT ITS ANNUAL MEETING AT AUGUSTA, MAY 16TH, 1890.

Blackstone divides corporations into aggregate and sole, or into ecclesiastical and lay, and the latter into civil and eleemosynary. Our law divides them into public and private.

To the latter, organized for public convenience or individual profit, these suggestions are intended to apply.

Ι.

#### DISSOLUTION BY REPEAL.

A corporation is dissolved by the expiration of its charter, by a torfeiture, by a surrender of its franchises or by the death of all of its members, without provision for succession (Code 1684), by the non-payment of its taxes (Code 877), and by repeal.

Revocation or repeal is the same as forfeiture, in its effect; the result is the same Both work a dissolution of the corporation. Technically speaking a forfeiture is a judicial act, while repeal or revocation is a legislative act.

The power of the Legislature and the power of the Court are based on different foundations, are bestowed for different purposes, depend on different principles, are exercised in different ways and their acts are valid or void for different reasons. (Waite on Insolvent Corporations, section 338.)

The position a corporation occupies towards the State is thus expressed in Young vs. Harrison, 6 Ga. 156, where Judge Lumpkin, after citing numerous authorities upon the question, concludes: "The doctrine at this date is well-settled, that a private corporation is a contract between the government and the corporators, and that the Legislature cannot repeal, impair or alter the

rights and privileges conferred by the charter against the consent and without a default of the corporation, judicially ascertained and declared, in a proceeding instituted for that purpose, at the instance of the government, and no advantage can be taken of a non-user or misuser by defendant in any collateral action."

Since the time of the rendition of this decision which was at the January term, 1849, the Code has gone into operation, and the present law is found in section 1651, which declares that persons are natural or artificial. The latter are creatures of the law, and except so far as the law forbids it, subject to be changed, modified or destroyed, at the will of their creator. They are called corporations, and in section 1682 of the last Code it is provided that, in all cases of private charters hereafter granted, the State reserves the right to withdraw the franchise unless such right is expressly negatived in the charter.

The next section, 1683, protects private corporations theretofore created from this power, unless the right of reservation was reserved at the time.

These sections were considered at the July term, 1873, by the Supreme Court, in the case of the Atlanta Street Railroad Company, 49 Ga. 159, and it was there held that when the company accepted its charter from the General Assembly it did so subject to this power specified in the above quoted section, which power, since January 1st, 1863, when it first appeared in the Code, introduced a new element in the law of private corporations, and by this power the State had the right to withdraw, modify or restrict the franchises granted whenever the State thought proper to do so, and that this power to withdraw the franchises necessarily included the power to limit or restrict its exercise.

The question was again considered in Central Railroad vs. The State, 54 Ga. 401, at January term 1875, and again in the case of The State vs. The Atlantic and Gulf Railroad, 60 Ga. 270, at the January term, 1878, where the court say, speaking by Mr. Justice Bleckley, these provisions, as considered by this court in 54 Ga. 401, reserved to the State the power to modify as well as the power to destroy; the power to mutilate so to speak, as well as the power to kill; and the corporation preferring death to mutilation has a resource of suicide; that is, it may surrender its charter.

This case was reviewed by the Supreme Court of the United States, in 98 U.S. 365, where the judgment was affirmed. In this case, the court say it is quite too narrow a definition of the word

right to be a corporation. The word is generic, covering all the rights granted by the Legislature. As the greater power includes every less power which is part of it, the right to withdraw a franchise must authorize a withdrawal of any or every right or privilege which is a part of the franchise.

In Lathrop vs. Steadman, 13 Blatch. 142, Judge Shipman, speaking of this power of repeal, says: "The Legislature has the right to exercise this power summarily and at its will, and its action being a legislative and not a judicial act cannot be reviewed by the courts unless it should exercise its powers so wantonly and carelessly as to palpably violate the principles of natural justice, and in such a case a repeal, like other legislative acts which do thus palpably violate the principles of natural justice, may be reviewed by the courts."

While the State has this power, it cannot undo or vacate contracts or other legal acts which were legal when done. question came up in People vs. O'Brien, 111 N. Y. 1, where it was held that the power to repeal the charter of a corporation cannot, upon any legal principle, include the power to repeal what is in its nature irrepealable, or to undo what has been done under power lawfully conferred. The court said, among other things: "The authorities seem to be uniform that the reservation of the right to repeal entitles the Legislature to vacate the corporate life and disable it from continuing corporate business," and quoted the language of Chief Justice Marshall in Fletcher vs. Peck, 6 Cranch, 135: "If an act be done under a law, a succeeding Legislature cannot undo it: the past cannot be recalled by the most absolute power; if conveyances have been made, those conveyances have vested legal estates; and if those estates are made to cease by a foreign authority, still that they originally vested is a fact, and cannot cease to be a fact. When, then, a law is in the nature of a contract, and absolute rights have vested under that contract, a repeal of the law cannot divest those rights." It would seem to be quite obvious that the power in the existing Legislature, by virtue of a reservation only, cannot be made the foundation of authority to do that which is expressly inhibited by the Constitution, or afford the basis of a claim to increased jurisdiction over the lives, liberty or property of citizens beyond the scope of express constitutional power.

Since the celebrated Dartmouth College case the doctrine is

firmly established that a grant of corporate powers, by the sovereign to an association of individuals for public use, constitutes a contract within the meaning of the Federal Constitution prohibiting State Legislatures from passing laws impairing its obligations.

The intimation, however, by Judge Story in that case, that the rule might be otherwise if the Legislature should reserve the power of amending or repealing it, has led to the adoption by the Legislatures of the various States of the practice of incorporating such reservations in Acts of incorporation. Whatever may be the effect of such reservations, it is immaterial whether they are embraced in the Act of incorporation or in general statutes or provisions of the Constitution. In either case they operate upon the contract according to the language of the reservation.

It is obvious, therefore, that this reserved power does not in any sense constitute a condition of the grant, and cannot have effect as such, but is simply a power to put an end to the contract, with such effect upon the rights of the parties thereto as the law ascribes to it.

In speaking of this subject, Chief Justice Waite says, in the Sinking Fund cases, 99 U. S. 748: "That this power has a limit no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made. \* \* Whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs, it retained the power to establish by amendment. In doing so, it cannot undo what has been already done, it cannot unmake contracts that have been already made, but it may provide for what shall be done in the future, and may direct what preparation shall be made for the due performance of contracts already entered into.

Further on, in People vs. O'Brien, the court came to the conclusion that the section of the New York law under discussion is a proper statement of the rights of the parties where such a repeal has taken place. That section is as follows:

"The Legislature may at any time annul or dissolve any corporation formed under this Act, but such dissolution shall not take away or impair any remedy given against such corporation, its stockholders or officers, for any liability which shall have been previously incurred," and say this section does not impair any remedy existing against the corporation, its directors or officers. This was the contract under which the dissolved corporation issued its stock, mortgaged its franchises, entered into traffic engagements and contracted debts. Creditors, contractors and stockholders had a right to rely upon the promise of the State that the annulment of the corporate charter should not affect the remedies existing in their favor against the corporation, and this promise is a contract protected by the provisions of the Federal Constitution. In the absence of any constitutional provision prescribing the effect of such repeal, it was competent for the Legislature to declare what that should be, and for the State to contract with reference to such a declaration."

In Georgia, however, our supreme court recently, on April 14th 1890, in the case of The Macon & Birmingham Railroad Company vs. Stamp, held the right of the State so to amend or destroy the charter is not in any degree abridged or affected by an executory contract between the company and a construction company, and between the latter and sub-contractors, touching the construction and equipment of the road. In so far as the amendment may render the performance of these contracts impossible, the impossibility will result from act of law, and performance to that extent will be excused. All parties contracting with the corporation must take notice of the conditions upon which it holds its franchises, and of its subjection to the legislative will.

In view of this decision, only the head-notes of which the writer has seen, all contracts in Georgia must be made subject to the repealing power of the State, but I do not think this applies to the case of an executed contract, whereby rights have become vested, nor could any repeal of the charter, which would violate these rights, have the effect to annul the corporate contracts so that these rights could not be enforced. Such action would be violative of the Federal Constitution, and therefore void. The decision seems to recognize a distinction between executory and executed contracts from the head-notes, and doubtless only permits the repealing power to destroy executory contracts.

It is well-settled that at common law, when a charter of a corporation is forfeited its contracts are extinguished and ended. No suit could be maintained thereon, as there was no one to sue. 11 Ga. 492. The realty reverted to the grantor or his heirs, and the chattels to the crown. But this is not the law now. Our Code,

section 1688, provides that upon the dissolution of a corporation for any cause its assets are a trust fund for the payment of its debts and division of the surplus among stockholders, and a receiver may be appointed to carry out this purpose. See Bacon vs. Robertson, 18 Howard, 485.

It will, therefore, be seen that a dissolution of a corporation by legislative action neither detroys its property nor annuls its executed contracts. They stand pretty much in the same position. as those of a natural person do upon his death. The reservation. under the charter of the right to repeal it. allows the State to destroy its corporate life, and prevent it from continuing its corporate business: but personal and real property acquired during its lawful existence, and the rights of contract or choses in action so acquired, and which do not in their nature depend upon the powers conferred in the charter, are not destroyed. Upon the repeal of an Act of incorporation, all the property and rights of the corporation become vested in the directors then in office or such persons as have by law the management of the business of the corporation, in trust for the creditors and stockholders, unless the repealing law provides for the appointment of other persons, than the officers of corporation as such trustees.

IT.

#### DISSOLUTION BY FORFEITURE.

A forfeiture is the result of a judicial investigation, and must be based upon some wilful violation of the essential conditions upon which the corporation was granted or from a misuser or non-user of its franchises; such forfeiture works a dissolution which dates from the judgment of a court of competent jurisdiction. Code, 1685. An approved form will be found in 19 Ga. Reports, 350.

This judgment of forfeiture must depend entirely upon a statute; there is no inherent power in a court of chancery to determine such a question.

A corporation being the creature of the Legislature, its general powers being derived from the government, the judicial department has no authority to interfere with the legislative, unless there is some special provision for this purpose.

The mode of enforcing forfeiture is thus stated in the case of The State vs. The Merchants' Insurance and Trust Company, 8 charter can be enforced in a court of law only, and the proceeding to repeal it is by a scire facias or an information in the nature of a writ of quo warranto. A scire facias is the proper remedy where there is a legal existing body capable of acting, but which had been guilty of an abuse of the power entrusted to it; a quo warranto where there is a body corporate de facto, which takes upon itself to act as a body corporate, but which, from some defect in its constitution cannot legally exercise the power it affects to use. But a court of chancery, unless especially empowered by statute, cannot decree a forfeiture, though it may hold trustees of a corporation accountable for an abuse of the trust." Where a statute provides a particular method of dissolving a corporation, that method must of course be pursued.

We have seen that a judgment of forfeiture must issue from a court of competent jurisdiction. This, in the State of Georgia, is the Superior court.

All corporations, whether public or private, were subject to visitation; in other words, to inspection, regulation and control by the tribunals recognized by the laws of the land.

Civil corporations being visited by the government itself through the medium of courts of justice, while the internal affairs of ecclesiastical and eleemosynary corporations are, in general, inspected and controlled by some private visitor, and this difference in the tribunals controlling corporations naturally results from a difference in their nature and objects. Civil corporations, which are those we have to deal with in these suggestions, whether public or private, being created for public use, are those which properly fall under the superintendency of that sovereign power whose duty it is to take care of the public interest; whereas corporations, whose object is a distribution of a private benefaction, may well find jealous guardians in the zeal or vanity of the founder, his heirs or appointees. (Angel & Ames on Corporations, 10 Edition, Section 684.)

In cases where there is no individual founder or donor, the Legislature, generally, are the visitors of all corporations founded by them for public purposes, and may direct judicial proceedings against them for abuse or neglects which at common law would cause a forfeiture of their charters. Ib.

In Georgia, however, our Supreme court has decided in the case



of the State Ex Relatione James J. Waring vs. The Georgia Medical Society, 38 Ga. 608, at the June term, 1869, that the Georgia Medical Society was a private civil corporation, that the corporators had property in the franchises of which they could not be deprived without due process of law, and that the Superior court of the county where the corporation was located had visitorial power over it, with authority to redress any wrongs which the corporation may inflict upon any of its members.

On this question the opinion says, page 627: "The rule of law on this subject, is thus stated by Blackstone, Vol. 1, page 381. The King being thus constituted by law visitor of all civil corporations, the law has also appointed the place where he shall exercise this jurisdiction, which is the Court of King's Bench, where, and where only, all misbehaviors of this kind of corporations are inquired into and redressed, and all their controversies decided.

In this State the same visitorial power regarding the misbehaviors of these corporations, and deciding their controversies, is vested in the Superior courts of the counties where they are located, which, in England, belongs to the King's Bench.

This was a case in which Dr. Waring, the relator, had been denied his rights and privileges as a corporator, and brought a mandamus against the corporation to compel it to restore him to his full rights and privileges as such, and which mandamus was made peremptory, commanding the corporation to restore the applicant to all his rights and privileges as a corporator in the society.

This question received consideration in the Supreme court of Pennsylvania in the case of The Commonwealth vs. The Delaware and Hudson Canal Company and The Pennsylvania Coal Company, 43 Penn. St. 300, wherein the validity of a contract between the Canal Company and the Coal Company was examined into. In this suit the State sought to exercise, through the court, upon an information filed by the attorney-general, its visitorial power. In considering the question the Supreme court says, on page 300, after referring to previous litigation between the defendants. "But now the State, in the exercise of its visitorial authority interferes to try whether or not that contract is in excess of the legitimate power of either of these corporations. No doubt the State has this authority. It usually asserts it through the instrumentality of writs of quo warranto and mandamus or information in law or equity in the nature of the quo warranto.

would be recognized as proper in a case of this kind, but there can be no objection made to it in this case, since it is here specially authorized, and no right can be injured by it. This court has authority to try whether any corporation is exercising franchises or functions not granted to it, and to oust it from the exercise of such; and it is a matter of no importance to the parties whether this authority is exercised in the common law or equity form, provided the right of trial by jury is not interfered with, as it cannot be in this case."

There is no statute in this State providing how visitorial power may be exercised over corporations by the Superior courts of this State, nor under what circumstances will the State herself at the instance of citizens generally, creditors or corporators, interfere with the management; so we have to look entirely to the common law.

It may be very important at times to wind up a corporation even when proceeding legally, especially if it is doing a losing business; yet there is no settled way by which this can be accomplished by a majority of the stockholders.

On this subject, the master of the Rolls, in the case of In Re the Factage Parisian Limited, 34 L. J. Chancery, 144, cited in Waite on Insolvent Corporations, Section 367, stated: "If the company is carrying on a business at a manifest loss, with no prospect of making anything of it, it can scarcely be said that this court can consider it just and equitable that the company should be allowed to continue against the will of persons who have embarked property in it to a considerable extent, when the court sees, if they go on embarking the whole of the capital, no benefit whatever can be derived from it," and concludes that it was proper for the Court to wind up the corporation. This decision was rendered in the case of a limited corporation existing under the statute law of England. While ordinarily this is no reason for dissolving the corporators or stockholders wished it.

In Croft vs. Lumpkin Chestatee Mining Company, 61 Ga. 465, Bleckley, Justice, stated. "The charter has many years to run, no forfeiture has been adjudged no surrender has been made; the court is not called upon to presume a surrender from non-user and lapse of time, for the bill treats the corporation as a living, subsisting entity. The complaint is,

that it is indolent, inert, lazy; that it won't work. It has valuable property that might be made profitable to the stockholders, but the stockholders are scattered and cannot be brought together so as to secure co-operation and concert. The officers are non-residents of the State; so, too, are the stockholders, the complainants excepted. A corporation thus situated is undoubtedly a sluggish body, and how to move it may not be easy to find out. The object of this bill is not to move it, but to strip it. But while it is alive can this be done? If it were dead, it would be an easy prey, but as long as it lives its property and franchises are its own, and how is a court of equity to terminate its right to them by a decree," and concludes that if the corporation can be wound up, and the assets divided out, it is necessary that all the stockholders should be made parties to the bill.

As all forfeitures of charters of corporations in Georgia, under the present law, must be based upon some violation of the essential conditions on which they were granted, this involves investigation of these conditions, either existing at the time of the grant, or contemplated to arise thereafter to determine the question of violation. From the misuser or non-user of its franchises a like result is reached; that is, a forfeiture, and whatever constitutes these acts, must be found in the law applicable to the particular corporation then inquired about.

The only general proceeding now in existence in Georgia is the common law remedy of action in the name of the sovereignty by the Attorney-General. It is respectfully suggested that there should be some statute by means of which the visitorial power of the Superior court can be put in motion more easily, and by which these courts could visit, control and regulate the internal affairs of all corporations chartered in this State, or exercising corporate powers therein.

In New York there is a provision by statute that, whenever a creditor or stockholder desires to bring an action for the dissolution of a corporation, he may submit in writing, under oath, to the attorney-general, a statement of the facts, showing the ground of such action, and if the attorney-general omits sixty days after such statement to commence an action for the purpose, such creditor or stockholder may apply [to the proper court for leave to commence such action, and on obtaining leave may maintain the same accordingly.

A statute similar to that of New York will accomplish this

purpose, and it should give instances wherein certain acts would be considered a violation of the essential conditions under which the corporation was chartered, or a non-user or misuser of its franchises. It would be well to provide: That a petition, setting out. the corporation, its objects, franchises and powers, and the particular violation, misuser or non-user of its franchise or other acts complained of, and how affecting the petitioner, should be addressed to the Attorney-General or Solicitor-General of the county of the domicile of the corporation with the request that he institute action in the name of the State; and if he fail so to do within a given period, that the petitioner would be authorized to presume the consent of the State to his own action, and apply by petition, setting out the same allegations to the Superior court of the county of the domicile of the corporation, for leave to file said information and require such visitation, and upon leave being granted the petitioner, whether in his own right or for the use of any one or as an informer should be permitted to enforce by action the general law against the particular corporation in question, to be followed by a judgment of fine or forfeiture as the case may be.

In Georgia there are one or two instances of such a statute as to particular corporations. An example can be found in Turnpike Company vs. Commissioners. 73 Ga. 556. In this case Taylor et al., Commissioners of Turnpikes, brought an action to forfeit the charter of the Habersham Turnpike Company, on grounds provided by the Legislature, subsequent to its incorporation, under an Act prescribing a different penalty for forfeiture than that stated in the original charter of the company, and for damages. for damages was rendered, and on appeal to the Supreme court, that court held that, if the company should fail in its duties to the public, the Commissioners of Turnpikes may proceed to forfeit the charter or may enforce the penalty as their predecessors. the justices of the Inferior court might have done, to the extent and in the manner designated in the Act of incorporation; in other words, holding, that the Legislature could not provide a subsequent or other ground of forfeiture than that stated in the original Act of incorporation. This was a charter granted prior to 1863. In this case the court say, "we are of opinion that the action is properly brought in the name of the Commissioners," Code. 719(aa). "That it was competent for the Legislature to change the law as it existed at the time of the chartering of this company as to the manner of enforcing the rights of the State and the party in whose name each proceeding should be had." At the time this charter was passed the State herself, or the Inferior court, would have had to institute a proper action to forfeit the charter, but now under the Statute, Code, 719(aa), it is made the duty of the Commissioners of Turnpikes of the county to institute suit against the owners or company to forfeit its charter when the corporation fails in its duty, which suit should be brought in the name of the commissioners.

From this it will be seen that it is competent for the Legislature to pass such an Act as that indicated above; that it is not essential that the proceeding should be in the name of the State, or the Attorney-General.

Another instance is found in the case of banks. Whenever the Governor has been informed that a bank has incurred the penalty of forfeiture he shall cause the Attorney General to institute proceedings of forfeiture in the county where the parent bank is located and if a verdict of forfeiture be rendered on the trial the judge shall pronounce the judgment for all purposeswhatever, saving the use of its corporate name in collecting and paying its debts and in conveying its real and personal estate, which power shall be exercised by the receiver appointed by the court for that purpose at that time. The duties of the receiverare defined, and by section 1491 the receiver is instructed to bring suit against the stockholders in his own name for their unpaid stock, but on his failure to do so any creditor may usehis name for that purpose. This is the only General Statute of Georgia, now recalled by the writer, where any individual is given the right to use the name of the court's officer to enforce hisright, where a forfeiture has taken place, although the original proceeding was in the name of the Governor.

In the case of the Macon & Birmingham Railroad Company vs. Stamp, above cited, the court held the citizens of Thomaston had as a class a special and particular interest in the matter-involved in the case, and could support an action for the protection of that interest, and the class being numerous some may sue in behalf of all. This was by virtue of the Act of the Legislature amending the charter of the railroad company approved November 7th, 1889, by which it was provided that if the said-road runs through the county of Upson and within five miles of the town of Thomaston, it shall run into and through the corporate limits of said town, or within one mile of the court-house

or the citizens thereof.

In the absence of a copy of the decision in this case I am unable to give these facts more completely.

Franchises are valuable privileges and under our law as it now exists, except in specified instances in the Constitution inhibited, any person can get a charter from the Superior court for almost any object, unless it is absolutely illegal on the face, which it is presumed the court would not sanction. As these charters have been and are granted so freely to each and every applicant, the State should pass some statute for their visitation and regulation, in proper bounds; not a statute to forfeit the charter in each and every case of simple violation, but the penalty should be by fine, if penal in its nature, or recovery of damages by the party injured, which latter exists now under the general principles of the law.

An instance of this is the Act of February 28th 1876, providing for keeping a record of all bonds issued in this State, and making it the duty of all public and private corporations, who shall issue or indorse any bonds for circulation, to furnish a statement thereof to the Secretary of State, and providing a penalty by fine of five hundred dollars for failure to comply therewith, one-half to go to the informer and the other half to the public school fund of the county.

That Act was construed 79 Ga, 60, in the case of McDaniel, Governor, vs. The Gate City Gas Light Company, where the governor brought an action in favor of a certain person as informer, for the school fund of the county against the company. In the opinion the Supreme court say: "The Defendant is a corporation. We do not understand that in this State a corporation can be indicted for an offence. This is an offence against the law, and we do not think the defendant can be indicted for it, but we think that this action was properly brought by the governor for the benefit of the informer and county school fund, and that it can be properly maintained under our Code, which authorizes the State, the Governor, the Attorney-General or the Solicitor-General, where the Act does not provide for any person bringing a suit for a penalty as in this case, to bring the action for the benefit of any person who informs."

Visitation is especially necessary as to what are called trading corporations. They are authorized to commence business when



business before this is done, the corporators, under the ruling in Burns vs. Beck, 10 S. E. R. 122, a case of fraud, are liable to creditors to make good the minimum capital only with interest. Yet where such a wild-cat concern is trading as a corporation, persons contracting with it as a corporation are held by certain decisions to be estouped from denying its corporate existence.

There should be some law requiring corporators before commencing business, to prove to the satisfaction of some officer or court that the ten per cent required by statute had been actually paid in, before they are allowed to commence business as a corporation; and semi-annually or annually they should be required to make returns of their financial condition to some officer or court of the county of their domicile, or be subject to inspection of such an officer, who could investigate and make a report accordingly of their affairs, in order that the public and persons dealing with the corporation may be informed of its condition, and not entrapped into selling or loaning money to an insolvent company.

For failure to make the return or submit to proper examination the penalty should be a fine, and a withdrawal of the right to do business, pending the refusal.

In the particular instance of railroads, we have in this State a railroad commission, with ample powers, which regulates railroad tariffs, etc. It has been suggested, in order to more effectually regulate railroad traffic and prevent unlawful consolidations and leases, and enforce the constitutional policy of the State, that larger powers should be given to the commission and make its decision final; but even if this were done, it could not preclude an appeal to the courts, on a proper case made, as recently decided by the Supreme Court of the United States in the case of the Chicago M. & S. P. Railroad Company vs. Minnesota, reported 134 U. S. 450. L. J. 325. In this particular case the court say, approving a previous case and quoting therefrom to this effect: "From what has been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under the pretense of regulating fares and freights the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use, without just compensation or without due process of law."

Under this reserved power as stated in People vs. Boston & A. Railroad, 70 N. Y. 570, "The legislature may impose upon railroad corporations such additional restrictions and burdens as the public good requires. It may not confiscate property."

The statute in Georgia on this subject is full and ample, without a necessity to have the same materially enlarged.

I therefore suggest that fine is the proper remedy for nearly every violation or failure of duty to the State, and damages to private persons.

In every case, however, of wilful misuser or non-user of its franchises, or violation of the essential conditions upon which the charter was granted, or where any person is specially and maliciously injured, or the policy of the State is set at naught, the charter should be forfeited and the property divided out among the creditors and stockholders.

#### III.

Georgia herself came into existence as a corporation June 9th, 1732, under a royal charter which the trustees of the corporation surrendered voluntarily to the King by deed in 1752. Having by the Treaty of Peace of September 3d, 1783, been recognized as a sovereign State, she has since then legislated for herself. The Yazoo fraud and the free banking law of 1838 taught her people the necessity of caution in corporate grants. By the Acts of 1843 and 1845, held constitutional in 14 Ga. 80, subdivision 5, it was enacted that the individual members of such corporations created thereunder should be bound "as in case of partnership," and this continued to be the law until the adoption of the Code, January 1st, 1863, with the reserved power to the State as set forth in section 1636 thereof.

From that date the liability, "as in case of partnership," was omitted from the statutes, which in turn imposed as a general rule only a liability on stockholders for the unpaid capital subscribed for.

At this time under the power given to the Superior Courts by the Code, and without action by the courts, under the Acts of 1876 as to purchasers of railroads, and the general law of 1881 for the incorporation of railroads, corporations are organized for almost every purpose.

We, in the language of a learned author, 30 Central Law Journal, 350, find them nurtured "into a vitality almost human-like,

which chafes under the slightest restriction and assumes almost any power." What restraint is to be imposed, and in what mode and manner, is a subject worthy to engage the labor of our legislators and our own as an association of lawyers.

I leave it, with these imperfect suggestions, to your kind consideration, and thank you for your attention.

# APPENDIX No. 9.

## REPORT OF COMMITTEE ON GRIEVANCES.

Under the By-Laws of this Association as they stood prior to-1888, it might have been doubted whether the Committee on Grievances was charged with the duty of reporting upon any case of professional misconduct, unless the offender was a member of the Association.

But at the annual meeting of that year an amendment to the by-law defining the duty of that committee was adopted, whereby it was extended to the professional misconduct of ANY MEMBER OF THE BAR. (See Proceedings of 1888, p. 39.)

The discussion which led to the adoption of this amendment is to be found on pages 37 and 38 of the volume; and it was expressly stated, as the object of the amendment, that the Association ought to empower its committee to act in cases of professional misconduct on the part of any member of the bar, especially such cases of gross or outrageous misconduct as would reflect upon the legal profession, if permitted to pass unnoticed.

It is a matter of public notoriety throughout the State that it is alleged that a case of this character has arisen during the current year.

We refer to the case of Luther A. Hall, an attorney of Eastman, Georgia.

The bar of Georgia is too honorable a body to permit any man guilty of such offenses to remain in its ranks; and the State Bar Association cannot, in justice to the purposes of its organization, permit such a case to pass unnoticed.

This committee does not assume to prejudge facts; we would extend in this instance, as in every other, the benevolent presumption of innocence until guilt is proved: but the publication of such grave charges, not accompanied or followed by any

denial, certainly demands that the Association should cause inquiry to be instituted and action taken in accordance with the result of the investigation.

Hence we report the following resolution:

Resolved, That the Committee on Grievances for the ensuing year, to be appointed by the incoming President, are hereby directed to investigate the said charges of professional misconduct against Luther A. Hall; and if they are satisfied, upon such inquiry, that said Hall should be disbarred, then they are authorized to provide for the institution and carrying on of such proceeding, and to employ counsel for such purpose, in the mode pointed out by said by-law; it being the intention hereof that said committee shall have full power to act in the premises.

W. M. REESE.

J. M. PAGE.

J, U. C. BLACK,

J. R. LAMAR, Committee.

# APPENDIX No. 10.

# REPORT OF THE COMMITTEE ON INTERSTATE LAW.

SUBMITTED TO THE GEORGIA BAR ASSOCIATION AT ITS SEVENTH ANNUAL MEETING AT AUGUSTA, GA., MAY 15TH. 1890.

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#### PREFATORY.

The Standing Committee on Interstate Law is composed of the following members: Walter B. Hill, Macon; Henry Jackson, Atlanta; P. W. Meldrim, Savannah; Henry C. Roney, Augusta, and Louis W. Thomas, Atlanta. The preparation of this report is what Mr. Meldrim calls "the same old story." The Chairman, who has the honor of the office, must needs do the work. Messrs. Jackson and Meldrim, in reply to a letter from the Chairman, asking suggestions, replied, expressing briefly, certain views which are herein quoted. Judge Roney and Mr. Thomas wrote that, on account of pressing demands on their time, they were willing to confide the writing of the report to the Chairman.

This statement is made in behalf of the members of the committee, as they might not, perhaps, subscribe to all the propositions embodied in the report. They are not personally bound by it, except in so far as they may be by the doctrine of estoppel by conduct.

II.

#### GENERAL OUTLINE OF THE SUBJECT.

Pascal uttered a truth for all time, and for all departments of thought, when he said, "Unity without diversity is tyranny; diversity without unity is confusion."

In its application to our American government, we might find

which there is much contention present time, and the "confusio secession, of which the logical or have been the breaking up of the asteroids of inferior magnitude.

The unity in diversity and the stitute the golden mean between that indestructible union of in Constitution, as interpreted by modern decisions of the supremean people.

Between the essential integral Government on the one hand, and diversity of sovereign State-hoos of Interstate relations, which Jathe title of Conflict of Laws, and of Private International Law, & Interstate Law.

The title adopted by Judge String mistakes by laymen—one of volume, declared it to be proof producertainty of the law. This work could afford to laugh until Mr. It a volume, covering precisely the posed Judge Story had treated, working it is a cisions of the courts. "Interstate designation of the general topic.

There are certain subjects, what trol of the several States—and elegislate without an amendment but upon which uniformity in States is exceedingly desirable.

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HOW MAY THIS UNIFORM.

The first organized influence in American Bar Association, organized declares that one of its objects is lation throughout the Union."



he shall open each meeting with an annual address, in which he shall communicate the most noteworthy changes in the statute law in the several States and by Congress during the year.

There is an admirable provision in the direction of securing the above object mentioned. The result is to bring before the Association, annually, the wide divergencies in State legislation divergency so extreme as to remind one of Pascal's saving, that "three degrees elevation of the pole reverses the whole of jurisprudence;" or Voltaire's declaration that the traveller through portions of Europe "changed the laws to which he was subject as often as he changed horses." The immense labor entailed upon the President by this provision of the by-laws has been each year faithfully discharged. Merely to recall the names of the distinguished gentlemen who have filled this office, James O. Broadhead, Benjamin H. Bristow, Edward J. Phelps, Francis F. Kernan, Alexander R. Lawton, Cortlandt Parker, John W. Stevenson, William Allen Butler, Thomas J. Semmes, George G. Wright and David Dudley Field (and of the President for 1889-90, Mr. Henry Hitchcock), suggests at once the great value of these annual summaries of legislation. A number of State Associations (among others, Alabama, Tennessee and Missouri) have copied in their by-laws this feature of the American Bar Association. The result has been probably a loss to the State associations. They have no machinery by which the President can obtain the necessary information. (The American Bar Association has a local council in each State on whom the President can call for assistance.) Hence, with a few notable exceptions, the President's address has been returned "non est inventus" at the annual meeting of the State Associations.

While the American Bar Association has not had until last year any Committee on the Specific Topic of Interstate Law, yet many propositions relating to the subject have been referred to and reported upon by its Standing Committee on Jurisprudence and Law Reform—a committee which has always been composed of some of the ablest members of the Association.

A summary of the bills and measures thus reported on and approved by the Association is hereto appended as Appendix A.

At the last meeting of the American Bar Association Mr. W. A. Collier, of Tennessee, made the following statement:

"At a recent meeting of the Bar Association of Tennessee, in



an able address by the President (Mr. McFarland), he made some wise suggestions in reference to the uniformity of laws. The address was referred to a committee, and that committee made a report, and in obedience to their request I have this resolution, which I submit for your consideration, and, I hope, adoption:"

"Recognizing the desirability of uniformity in the laws of the several States, especially those relating to marriage and divorce, descent and distribution of property, acknowledgment of deeds, execution and probate of wills; therefore, be it

"Resolved, That the President of this Association appoint a committee, consisting of one from each State, who shall meet in convention at a time and place to be fixed by the President, and compare and consider the laws of the different States relating to these subjects, and prepare and report to this Association such recommendations and measures as will bring about the desired result."

In pursuance of that resolution, which was adopted without dissent, the President appointed the following committee:

T. J. Semmes, Chairman, New Orleans, La.; Walter L. Bragg, Montgomery, Ala.; M. M. Cohn, Little Rock, Ark.; M. M. Estes, San Francisco, Cal.; George J. Boal, Denver, Col.; Lyman D. Brewster, Danbury, Conn.; Ignatius C. Grubb, Wilmington, Del.; Henry Wise Garnett, Washington, D. C.; R. W. Williams, Tallahassee, Fla.; P. W. Meldrim, Savannah, Ga.; Julius Rosenthal, ·Chicago, Ill.; W. P. Fishback, Indianapolis, Ind.; Emlin McLain, .Iowa City, Ia.; George R. Peck, Topeka, Kan.; George M. Davie, Louisville, Ky.; A. A. Strout, Portland, Me.; Skipwith Wilmer, Baltimore, Md.; Leonard A. Jones, Boston, Mass.; T. J. O'Brien, -Grand Rapids, Mich.; George B. Young, St. Paul, Minn.; R. A. Hill, Oxford, Miss.; Gardiner Lathrop, Kansas City, Mo.; Wilbur F. Sanders, Helena, Montana; James W. Woolworth, Omaba, Neb.; -James F. Colby, Hanover, N. H.; R. Wayne Parker, Newark, N. J.; W. C. Hazeldine, Alberquerque, N. M.; N. C. Moak, Albany, N. Y.; John B. Bridgers, Jr., Tarboro, N. C.; Rufus King, Cincinnati, O.; M. P. Deady, Portland, Oregon; C. Stuart Patterson, Philadelphia, Penn.; James Tillinghast, Providence, R. I.; Henry E. Young, Charleston, S. C.; J. W. Wright, Clark, S. D.; B. M. Estes, Memphis, Tenn.; J. H. McLeary, San Antonio, Tex.; Norman Paul, Woodstock, Vermont; J. Randolph Tucker, Lexington, Va.; John A. Hutchinson, Parkersburg, W. Va.; Bradley G. Schley, Milwaukee, Wis.; Frederic S. Hebard, Cheyenne, Wyoming.

It will be seen at once that this is a large committee of able

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men, and that a meeting of such a committee would be a sort of Congress.

If they can agree, and if each member of the committee would give his personal attention to securing the adoption by his State Legislature of the measures recommended, it would seem that this is the most promising and practical suggestion yet made for the promotion of the desired uniformity.

Hitherto, the Local Councils of each State have been looked to as the means of securing State legislation; but often they feel no particular interest in the matter recommended, and up to the present time little has been accomplished in that way.

There is good ground for skepticism, even as to the results of the proposition made by Mr. Collier. Can so large a committee be gotten together? Will so numerous a body be able to reach an agreement? Is it possible or probable that by any means whatsoever, known to the wit of man, forty American Legislatures can be so induced to act on the same subject and to legislate alike?

#### THE NATIONAL BAR ASSOCIATION.

This body was organized about four years ago.

In the statement of its purposes it differs from the American Bar Association in a somewhat more explicit declaration of its objects with reference to the unification of legislation. It mentions the subjects which are believed to be matters of common interest, and names the "law of descents, of wills and conveyances, of marriage and divorce, of limitations of actions, for the settlement of estates, the laws affecting comity between the States, the extradition of criminals, those concerning commercial papers," etc.

There is a difference of opinion among the members of other State Associations, and the difference exists even among the members of this committee as to the raison d'etre of this organization. By some it is regarded as an unnecessary rival of the American Bar Association—an intruder into the field already occupied by the older and more influential body. By others it is regarded as a worthy ally—entitled to full comity—and by these persons it is believed that there is work enough for both to do and to spare. While holding prime allegiance to the

American Bar Association they do not find it in their duty as loyal members thereof to oppose or in any way derogate from the work and usefulness of the National organization.

We append hereto, as Appendix B, a schedule of the legislation hitherto recommended by that body—for information on the general subject.

We may briefly allude to two other matters as tending to facilitate labor in promoting a greater uniformity of legislation on subjects of common interest. One is the annual publication of an excellent and reliable manual, Hubbell's Legal Directory, giving a synopsis of the laws of the several States on such subjects and the other the publication of Stimson's Statute Law—an experiment which we trust will be carried further than the topics embraced in the first volume.

One of the most important subjects on which uniformity is desirable is that which will now be alluded to.

#### IV.

#### EXECUTION OF DEEDS.

This subject is briefly alluded to in the letter of Mr. Meldrim as follows:

"How few deeds sent out of Georgia for execution are ever returned properly executed."

Mr. Jackson's letter also calls attention to the same difficulty. The Georgia statute requiring deeds to lands in the State to be executed in the presence of a commissioner of deeds for the State of Georgia, or before a judge of a court of record, with a certificate of the clerk of the court to the genuineness of the signature of the judge, is really so stringent as to amount to an obstruction in the disposition of real property.

Commissioners of deeds for the State are only to be found in large centers. Judges of courts of record are not easily accessible.

There is no reason why much of this difficulty should not be relieved by local legislation, to-wit: an amendment to the law, allowing attestation by a notary public or other magistrate, accompanied by the certificate of a clerk of a court of record that the notary or magistrate is duly qualified.

One remarkable instance arose within the personal knowledge of the Chairman, illustrating the difficulty of getting deeds in other States properly attested under our law. A deed was signed by various heirs at law residing in ten different States. Each attestation had more elaborate "red tape" than our law requires, but not the particular kind of formality that was necessary. Every one of the attestations was insufficient.

It is said by a competent authority that, except two New England States, there is considerable difference in the requirements of each State. Certainly it will be a long time before uniformity can be brought about. In the meantime great relief would be experienced by an enactment providing that any deed properly executed under the laws of the State where made shall be held sufficiently executed in this State.

Local officers are acquainted with the requirements in their own States, and few mistakes occur. It is much easier for the Georgia lawyer or clerk of court to examine Hubbell's Directory and ascertain whether a deed in Virginia is executed as required by the laws of Virginia than it is for him to attempt to instruct a party, or an officer, in Virginia how to carry out the requirements of the Georgia Code.

A similar Act to that now suggested has been adopted in Georgia relative to wills. It might well be extended to deeds and mortgages.

V.

#### VERIFICATION OF PLEADINGS.

Mr. Jackson calls attention to this matter as follows:

"In my practice I am constantly annoyed by want of uniformity in the laws of various States, as to the officers before whom pleadings may be verified. If there could be secured harmonious action by all the States of the Union upon the subject of the form and mode of execution and probate of deeds, conveying lands in foreign States, and of the officers before whom to be executed, and of the officers before whom pleadings may be verified, it certainly would be a matter of great convenience to the practitioner whose business covers more than one State.

Recently, I have had occasion to have deeds executed conveying lands in Florida, and also pleadings verified, to be filed in that State. To hunt up a commissioner of deeds for the State of Florida, and to pay the sum of five dollars in each instance for this work is, to say the least, not pleasant."

#### BANKRUPTCY.

This matter may not improperly be considered by the committee. The following extract from the Report of the Judiciary Committee of the House of Representatives shows its connection with the subject of Interstate Laws:

"Most of the large cities, which constitute the commercial centers of the country, are near State lines, and as a result all of the large business concerns and most of the small ones do business in two or more States. The fact that the laws in every State are different, subject these promoters of the commerce of the country to what seems to be needless expense, and subjects them to confusion which arises out of the fact that their rights and responsibilities are changed every time they cross a State line. The differences and inconsistencies of State laws on the subject are, therefore, in a sense, an obstruction to commerce and a charge on it which can be prevented by the enactment of a uniform and just national law upon the subject."

We append hereto as Appendix C, other portions of the report referred to. The committee reported favorably on the Torrey Bankrupt Bill, which has been very carefully prepared and is a great improvement on previous bankruptcy legislation.

A bankrupt law is a good measure for honest debtors; and for local as well as non-resident creditors.

#### VII.

#### FEDERAL CODE OF PROCEDURE.

At the annual meeting in 1888, the American Bar Association adopted the report of a committee declaring that it is both practicable and desirable that there should be codes of procedure adopted for civil and criminal cases in the United States courts. The report adopted had been prepared and signed by eminent gentlemen, among them John F. Dillon, Henry Hitchcock and Thomas M. Cooley.

The "Code of Procedure" is a triumphant idea. It has made conquest even of England as far back as 1872; and it would be simply incredible, if it were not true, that we are still wearing the old clothes that our ancestral "kin beyond sea" have long ago discarded.

A rational and simple Code of civil procedure, such as could



easily be framed from the works of Boone, Pomeroy, Bates and Bliss, if adopted by Congress, would doubtless be soon adopted by every State in the Union; and where that was done, the judicial labor expended by all our States and Federal courts on questions of procedure would not (as now) be thrown away, so far as any general utility is concerned, but would be a valuable contribution to the development and exposition of a harmonious and rational system in which the substance of right would no longer be sacrificed to the form of statement.

#### VIII.

#### FEDERAL GENERAL JURISPRUDENCE.

The doctrine known as that of a general jurisprudence in the Federal Courts, as distinct from that administered in the courts of the State in which the Federal Court is held, is an important and far-reaching doctrine. It results in the startling anomaly of two different systems of rights—growing out of precisely the same transactions—the difference in the rights of parties depending wholly on the accident of diverse citizenship.

There have recently appeared in the Central Law Journal strong articles antagonizing this doctrine, and holding to the view that the Federal Courts in any State should enforce the rules of law as recognized in that State as to all matters in the same way they now follow State decisions on rules of real property and questions of purely local law. A strong argument on the other side of the question is made by Mr. Chamberlin, in a volume of Essays on Constitutional Law, recently published.

The general subject affects the Interstate relations of citizens of the several States, and we therefore call attention to it and recommend that the Executive Committee request the preparation of a paper on the subject, to be presented to the next meeting of the Association, in order that the matter may be considered and discussed.

#### IX.

#### EXTRADITION.

The law on this subject needs amendment in several important respects. There should be proviso for a speedy hearing of persons arrested, preliminary apprehension of fugitives from justice, and

prevention of the use of the process for private ends. We recommend the passage of an Act prepared by a convention of State officers and eminent lawyers, which met at Saratoga, at the invitation of the Governor of New York, and in which Georgia was represented by Hon. Thos. J. Simmons and Boykin Wright and W. W. Montgomery. The Act is appended as Exhibit D

#### CONCLUSION.

The following resolutions are reported for consideration:

- 1. That we favor the enactment of a law providing that any affidavit, contract, mortgage or deed properly authenticated or attested, under the laws of the State in which it is made, shall be deemed and held to be sufficiently authenticated or attested, in Georgia.
- 2. That we favor the adoption by our Legislature of the Acts recommended by the American Bar Association for adoption in the States.
  - 3. That we favor the passage of a National Bankrupt Law.
- 4. That we favor the appointment of a Commission to prepare and report to Congress a Code of Procedure for civil cases and for criminal cases.
- 5. We recommend the passage of the Extradition Act appended in Appendix D.

## APPENDIX.

(A)

# LEGISLATION RECOMMENDED BY THE AMERICAN BAR ASSOCIATION.

I .- FORM OF ACKNOWLEDGMENTS.

Resolved, That this Association recommends the passage by the Legislature of the several States and Territories of the Act relating to acknowledgment of instruments affecting real estate in the form reported by the Committee on Jurisprudence and Law Reform, a copy of which is hereto annexed, and marked Schedule A; and that under the direction of said committee the several Local Councils be and they are hereby requested to further, by all proper means, the passage of such Act by their State Legislatures.

#### SCHEDULE A.

## REFERRED TO IN THE FOREGOING RESOLUTION.

An Act relating to Acknowledgments of Instruments Affecting Real Estate.

SECTION 1.—The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

ment is taken.)

1. In the case of natural persons acting in their own right:

On this day of ,18, before me personally appeared A B (or A B and CD), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or theu) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney:

On this day of , 18 , before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

3. In the case of corporations or joint stock associations:

On this day of ,18, before me appeared AB, to me personally known, who being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its Board of Directors (or trustees), and said AB acknowledges said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate scal, omit the words "the seal affixed to said instrument is the corporate scal of said corporation (or association) and that" and add, at the end of the affidurit clause, the words, "and that said corporation (or association) has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

SEC. 2. When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release of dower, or other instrument affecting real estate, shall be required.

#### II .- MARRIAGE AND DIVORCE.

Resolved, That in view of the frequent occurrence of cases of irregular and fraudulent practices in the conduct of suits for divorce, involving abuse of the process of the courts, breach of professional obligations, and connivance at actual crime, the Local Councils of the Association, and the several State and Local Bar Associations, be respectfully requested, as far as possible, to expose such irregularities and frauds, and to secure the punishment of all parties concerned in them.

Resolved, That the several Local Councils and State and Local Bar Associations be requested to advocate the enactment, in their respective States of a statute of which the following is a draft:



The jurisdiction of the courts of this State, in suits for divorce, shall be confined to the following classes of cases:

- 1. Where both parties were domiciled within this State when the action
- 2. Where the plaintiff was domiciled within this State when the action was commenced, and the defendant was personally served with process within this State
- 3. Where one of the parties was domiciled within this State when the action was commenced, and one or the other of them actually resided within this State for one year next preceding the commencement of the action.

#### III.—Commissions of Legislation.

Resolved, That in view of the growing evil of hasty and ill-considered legislation and of defective phraseology in the statute law, this Association recommends the adoption by the several States of a permanent system by which the important duty of revising and maturing the Acts introduced into the legislatures shall be entrusted to competent officers, either by the creation of special commissions or committees of revision, or by devolving the duty upon the attorney-general of the State.

# AN ACT CONCERNING FOREIGN MARRIAGES.

- SECTION 1. Marriages in a foreign country between citizens of this State, or between a citizen of this State and a foreigner, shall be valid, if celebrated according to the laws of such country.
- SEC. 2. Marriages in a foreign country between citizens of this State, or between a citizen of this State and a foreign woman, shall be valid, also, if celebrated at a legation or consulate of the United States, by a diplomatic or consular officer of the United States connected with such legation or consulate, or, in his presence, by any minister of religion.
- Sec. 3. Such diplomatic or consular officer shall cause a record of the marriage to be kept at such legation or consulate, and shall sign and give to each of the parties so married a certificate of such marriage, and shall send another to the Department of State at Washington, and another to the Secretary of this State for record; and such certificate under the seal of the legation or consulate, or a certified copy of the record thereof from the Secretary of this State, shall be legal evidence of such marriage. Such certificates shall specify the names of the parties, their ages, places of birth and residence, the date and place of marriage, and the name and official, or ecclesiastical, position of the person by whom the marriage was celebrated.
- Sec. 4. Every man, so married, shall, within three months after his return to this State, deliver either such a certificate of his marriage, or a copy from the office of the Secretary of the State of the record of such a certificate, to such recording officer, if any, as under the laws of this State as then existing would be required to register or record such marriage, had it occurred at the home of the husband within this State; and for any neglect of such delivery he shall forfeit twenty dollars.
  - SEC. 5. This Act shall not apply in favor of any citizen of this State, who,



afterward return and reside in this State; or who is under the age of twenty one years, at the time of the marriage, unless the written consent of his or her father or guardian to such marriage is filed in such legation or consulate before the marriage.

**(B)** 

# LEGISLATION RECOMMENDED BY THE NATIONAL BAR ASSOCIATION.

An Act Concerning the Negotiability of Promissory Notes.

Be it enacted by \_\_\_\_\_\_, as follows:

All notes in writing, whereby the maker shall unconditionally promise to pay to the order of any person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, and shall have days of grace, as inland bills of exchange, according to the custom of merchants.

An Act limiting the time within which actions may be brought upon contracts in writing, not under seal.

Be it enacted by -----as follows:

SECTION 1. No action to recover money upon a contract in writing, not under seal, shall be brought after six years next after the right to bring the same shall have first accrued.

SEC. 2. When a cause of action has arisen in a State (or Territory) other than this, or in a foreign country, and between non-residents of this State (or Territory), and by the laws thereof an action cannot be maintained, by reason of the lapse of time, an action thereon cannot be maintained in this State (or Territory).

SEC. 3. This Act shall only apply to contracts hereafter made, and all laws, in so far as they are inconsistent with this Act, are hereby repealed.

#### ACKNOWLEDGMENTS.

An Act is recommended similar to that recommended by the American Bar Association.

(C)

# EXTRACT FROM REPORT OF JUDICIARY COMMITTEE OF H. R. ON THE TORREY BANKRUPTCY BILL.

Commercial credit would be strengthened and commercial intercourse enlarged by the passage of a just bankrupt law.

The credit system is the bulwark of commercial intercourse in this country. It is impossible for the business man of to-day to know any considerable portion of his customers. By the present chaotic state of the laws on the subject of the collection of debts, the giving of preferences, and the secreting of property, the interests of business men are subjected to great peril. The enactment of a law, pursuant to which every person parting with goods would be assured of collecting at least a part of the purchase price of them.

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absence of adequate laws for the protection of his property interests. The same condition of affairs is responsible for the fact that many good men do not get as large a line of credit as they are entitled to upon their merits. It therefore follows that just in proportion as the manufacturer is secured against loss he will extend large lines of credit to the jobber. The jobber, in turn, by reason of the greater security experienced, will extend the line of credit to the retail purchaser, and the consumer, in turn, will be benefited by the fact that his credit is enlarged. So that the effect will be that the capital invested by the manufacturer, the jobber and the retailer, will in effect be enlarged in this, that their credit will be extended and they will thereby be enabled to do a larger business and all of them will be able to transact their business at a smaller margin of profit, and the consumer will in turn share in the general promotion of the interest of all parties concerned.

The enactment of a just law will secure the greatest good to the greatest number, and promote honesty and fair dealing between all men.

It, therefore, necessarily follows that if an equitable bankrupt law should be enacted, commercial credit would be strengthened and commercial intercourse enlarged, and as a result profits will be more secure, business risks jess hazardous, and prices less to the consumer.

Public policy justifies the discharge of honest insolvents from their indebtedness over and above the amount that their assets pay in dividends.

All civilized governments extend a consideration to the poor man by granting to him certain exemptions. The granting of a discharge to an honest insolvent is but an exemption in another form, and is justified on the same grounds. Instead of providing that certain articles of household furniture and a certain amount of the necessaries of life shall be exempt from seizure under process for debt, as provided by the exemption laws, it is provided by the bankrupt law that all debts which were incurred prior to a certain date hall not be collectible by law.

It is a matter of public concern that every citizen should have an opportunity to pursue the calling for which he is best adapted and in the way and under the circumstances which will enable him to be as large a producer as possible, to the end that the aggregate wealth of the community in which he lives may be increased. When a man has paid his honest debts to the extent of the distribution of his property, it becomes a matter of public concern that he should be released from his indebtedness and consequent embarrassment—provided, of course, he is an honest man—instead of being enslaved by reason of the demands of his unfortunate creditors, whose claims are increasing by the accumulation of interest, and are in consequence beyond the hope of payment by any man laboring in the capacity in which his earnings are protected by exemption laws.

It may be safely said that the discharge of honest insolvent debtors is no detriment to their respective creditors. If the persons discharged are honest, the discharge but gives them an opportunity to accumulate, if possible, enough to pay off their indebtedness, and if they have not the sense of commercial honor which would lead them to pursue this course, a claim against them is wholly worthless.



#### ACT RELATIVE TO EXTRADITION.

A bill to amend Section 5278 of the Revised Statutes.

"1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That section 5278 of the Revised Statutes be, and the same is so amended as to read as follows:

"Section 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fied, it shall be the duty of the executive authority of the State or Territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within two months from the time of the arrest, the prisoner may be discharged. penses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory.

"2. Whenever any person is held or claimed by such agent, it shall be lawful for any judge of the United States or of any court of record of general jurisdiction in any State, upon application made to him by, or on behalf of, such person, and upon proof that reasonable notice of such application has been given to such agent, to order such person to be discharged from custody, unless sufficient cause shall be shown to such judge why such discharge should not be ordered.

"3. It shall'be lawful'for any judge of the United States, or for any commissioner duly authorized so to do, or for any judge of any Court of Record of general jurisdiction in any State, upon complaint made under oath, charging any person found within the limits of such State, District or Territory with having committed a felony in any other State, District or Territory, and with being a fugitive from justice, to issue his warrant for the apprehension of the person so charged, that he may be brought before such Judge or commissioner to the end that the evidence of criminality may be heard. If, upon such hearing, he shall deem the evidence sufficient to sustain the charge, he shall certify the same, together with a copy of evidence, to the Chief Executive officer of the State, District or Territory, and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain subject to the demand of the Executive of the State, District or Territory from which he has fled; provided, however, that no person



period no lawful demand be made for him he shall be set at liberty. And provided further, that said judge or commissioner may, if he deem it proper, before issuing his warrant of arrest, or that of detention, require security for costs, and a bond of indemnity to answer all damages to the accused in such sum as he may deem just, and he may admit the accused to bail.

- "4. It shall be unlawful to arrest or try any person surrendered by the Executive of any State, District or Territory under this Act, for any other offense committed before said surrender than that charged in the demand, until a sufficient time shall have elapsed after his discharge to enable him to return to the place from which he was taken.
- "5. Whoever shall take any action under the provisions of this section for the arrest or detention of any person for the purpose of prosecution on any other charge than that set forth in the demand or complaint, or for the purpose of enforcing the payment of a debt, or obtaining security therefor, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not more than one thousand dollars, or imprisoned for a term not exceeding one year, or both, at the discretion of the court. And whenever it shall be made to appear before any judge that the object of the demand or complaint is to prosecute the accused on another charge, or to constrain or extort the payment or securing of a debt, such fact shall be deemed good ground for his discharge.
- "6. Whoever shall arrest or detain any person in any State, District or Territory for the purpose of transporting him, or of causing him to be transported, into any other State, District or Territory, without lawful authority, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding ten thousand dollars, or imprisoned for a term not exceeding ten years, or both, at the discretion of the court."

# APPENDIX No. 11.

# REPORT OF COMMITTEE ON MEMORIALS.

Mr. President and Gentlemen of the Bar Association:

Your Committee on Memorials have, this year, to discharge a duty which has hitherto not devolved upon them. At the last meeting of this Association a resolution was adopted, instructing them to prepare a sketch of the life and services of some distinguished deceased member of the Georgia bar, and accompany it with a suitable portrait of the subject of their memoir.

The most delicate and difficult feature of this duty was the selection of the subject of the expected sketch. This being the inauguration of this appropriate custom, a wider field of selection was presented to us than will hereafter confront future committees.

We have deemed it advisable to choose some Georgia lawyer, whose chief claim to distinction rests upon his professional services. As a lawyer who most nearly approximated the ideal of our profession, we have chosen as the subject of this brief and imperfect sketch the late Thomas R. R. Cobb. Distinguished as a scholar, as an orator, and in that crucial period of our country's history which immediately preceded his death, rapidly acquiring fame as a statesman and a soldier, it is yet as a lawyer that Mr. Cobb will be best known to posterity.

It is a sad reflection for the members of our profession that no fame is so ephemeral, and no posthumous distinction so circumscribed, as that of the brilliant and successful advocate. The annals of history shine with the names of many lawyers who have become immortal as statesmen and as orators, but this distinction has been generally won in a sphere which attracted a larger share of public attention than that commanded by purely professional achievements.

Cicero, the prince of orators, has been ranked with a frequency which must carry some evidence of truth, as but a second-rate lawyer. In the earlier history of our country, the novelty of many questions arising out of the isolated and untried features of our government afforded the bar an exceptional field for originality of



conception and that lucidity of statement and eloquence of expression, which is sought for by those who seek the public rather than the prossessional ear. This field has been so narrowed within the past century by the increase which frequent amendments have made in our organic law, that the American lawyer is now confined to professional pursuits for professional distinction.

It is fortunate for the inspiration of the profession in Georgia that at least one of its members has, in a purely professional capacity, graven his intellectual statue upon our statute law. So long as the Code of Georgia shall last, so long will the name of Thomas R. R. Cobb command the reverential homage of every lawyer in the State. To the younger members of the Georgia bar, there is some difficulty in comprehending the breadth and stability of the service which this distinguished compiler has rendered to the State. Accustomed to the Code, some of us born under it, and nearly all of us reared under it, we are not prepared to appreciate the difficulties which existed prior to its adoption.

The subject of codification has, since the time of Justinian, and indeed long prior to that time, been a source of fruitful controversy among the members of our profession. Even in enlightened Rome it needed the stern and sustaining force of an impartial will to force the lawyers of that age to yield their homage to the Code compiled by Rome's most eminent jurist—a Code which was fashioned by selecting and arranging a wise and symmetrical system of law from the abundant mass of prætorean edicts, which had created a common law broader, more complex, more plastic and more serviceable than the original statute law as contained in the twelve tables.

In Spain, under Alphonso the Wise, a code was compiled in the thirteenth century which commanded at once the admiration of the profession and the homage of the people. In restless France the irresistible will of Napoleon forced the adoption of a Code which still continues in force in that enlightened country. This work was accomplished by the most eminent jurists of France, yet the ideas and the will power necessary to carry into execution the scheme of combining the obscure and conflicting laws of the various provinces of that country, was the product of the haughty genius of the first Napoleon. The triumphal pæans which the Conqueror's cannon sounded at Marengo and at Austerlitz find but a feeble echo in the judgment of this philosophic and reasoning age, but the Code Napoleon has survived Waterloo and St.

Helena, and like the royal scepter of an indomitable intellect, still commands the kiss of homage from enlightened France.

In Germany, the consolidation of the empire has kept equal pace with the codification of its laws. It would be difficult to determine whether the approaching consolidation of the various principalities of that Empire produced the Code, or how great an effect the Code produced in causing and cementing this consolidation.

In America a fierce fight has been waged against what is called the transformation of the unwritten law into written law. No question has so educed the polemic ability of the great bar of the State of New York as the adoption of a civil Code. The Bar Association of the State of New York have annually appointed a committee to appear before the General Assembly and resist the adoption of the code which is popularly known as the David Dudley Field Code."

It was fortunate for Georgia that comparatively early in her history this vexed question was settled in favor of codification. By an Act of the General Assembly, assented to on the 9th of December, 1886, provision was made for the election of three commissioners, "To prepare for the people of Georgia a Code which shall as near as practicable, embrace in a condensed form the laws of Georgia, whether derived from the common law, the Constitution, the statutes of the States, decisions of the Supreme Court, or the statutes of England and of force in this State."

Something similar to this is the Constitution of the State of New York. The impracticability of concentrating this great mass of law into one volume, without leaving the fixing of the law of the land to the judgment of two or three commissioners, and the objection on the part of the bar and the people to have such great authority lodged in a few individuals, seems to have occasioned the bitter fight which has been waged on codification in New York.

In nothing has there been better exhibited the conservative wisdom of Mr. Cobb and his distinguished coadjutors, than the manner in which they avoided what might have been a similar war in Georgia.

In the preface of the original Code, they say: "Looking alone to the words of the Act, the object contemplated by the Legislature swelled into a project, the magnitude of which would have deterred the boldest adventurer, if its accomplishment did not

however, did not believe that such a construction of the a proper interpretation of the legislative will, but constructing a Code which should embody the great fun principles of our jurisprudence, from whatsoever source degether with such legislative enactments of the State as the and circumstances of our people had, from to time, shownecessary and proper."

The Code thus construed and subsequently adopted l to this State all the benefits derived from codification, those disadvantages which were most generally urged codification.

It is not generally known, perhaps, that the State o was a pioneer in the matter of codification, and the distinability with which the original Code was prepared, and withe subsequent Codes have been constructed, are at oncement to the progressiveness of the legislators of the State industry and ability of her bar.

It is with pleasure that I note the fact that no lawyer generation has been more prominently or justly identif codification than a member of the bar of Macon, who has a President of the Georgia Bar Association, with distinguished to himself and marked advantage to that illustrious body

If Mr. Cobb had done nothing else, his labors as a codific have entitled him to professional immortality, but the recoof his professional associates now crystallizing into traditi sent him to the bar as the ideal of an almost incomparal yer. Profound in learning, sound in judgment, learned most essential of all books to the practitioner, the Godbook of human nature; lucid in statement and eloquent in it would be difficult to imagine one who more nearly en all the elements of a great lawyer.

When it is remembered that he died at the age of forty, it cult to understand how one man could have accomplishmuch in so short a period. One great secret of his success marvelous and untiring industry. We have been told who knew him well that if he had completed the most implabor in the preparation of a case, the writing of an opinitany work on which he was engaged, five minutes before his about, he would not, as is customary with the profession, regal as a good place to quit and leave his office at once, but he

Few of us appreciate the large amount of time that is lost by daily occurring hiatus between one piece of labor completed another begun.

The great powers of Mr. Cobb's mind were not obscured by inevitable grossness which follows dissipation, and the afflu of his energy was not squandered in pleasures dissolute from very idleness which they produce. Few lawyers—alas, how fe can look back upon their professional career without recalling much time unemployed as has been actually expended in 1

The difference between the fairly successful practitioner and great lawyer, to our minds, lies in what one might call "the half hour." The one, in preparation of his case, has made a tensive examination of authorities, has a general but undig idea of the principles involved, and being reasonably satisfied he is as well prepared as his opponent, goes smiling, and post a little slip-shod, into court. The other devotes the last half to a careful review of his propositions, a sifting of his author patient thought as to the best method of presenting his idea the court or jury, and when he enters the temple of justice lays his gift upon the altar, it compares with that of his less ful opponent as a chiselled statue compares with a foundry iron figure.

Mr. Cobb was an earnest and ambitious student from his hood. When the writer was at the University of Georg 1872, it was still the tradition there that Tom Cobb had never to make the highest possible mark in every study during a term during which he attended that institution. The for this assertion will be best appreciated by those who have ess to follow his example.

Mr. Cobb was a profound student of the law, and being as ceptional linguist, he prosecuted his legal studies, not on the English and Latin tongue, but in the German and Fras well. Had it not have been for his conversance with French language, that very able portion of our Code which to the duties of attorneys had probably not been incorporat that volume.

When the great issue of slavery was culminating in seces for the first time in his life Mr. Cobb took an active interes politics. With a nation quivering in the throes of an approach revolution, for the magnificent stage on which to make his p cal debut, with a mind stored with the study of a score of years, with brain and tongue well trained by his unrivalled practice at the bar, with a character which had been, not only above reproach, but for years held up as a model to the young of the State, enthused with patriotism, and profoundly stirred by what he deemed the oppression of his people, his first appearance in politics constitutes a chapter in the political history of Georgia, which was never equalled before, and which will probably never be repeated again. It is said by those who heard him at that time that his eloquence was absolutely electrifying, When Georgia had seceded, and the shock of battle came, Mr. Cobb laid down the pen for the sword, and the same pre-eminent ability which had characterized him everywhere, was noticed in his brief career as a soldier. A life of triumph was closed by a death of heroism upon the field of Fredericksburg.

Rarely has the bar of any State or of any country such just cause to point with pride to one of its members as the bar of Georgia finds in paying this tribute to Thomas R. R. Cobb. It is not too much to say of him that his career makes us proud, not only that we are lawyers, but also that we are men.

Your committee has in preparation a steel engraving of the distinguished subject of this sketch, taken from a portrait which his family regard as the best likeness of him that has been preserved, and stand ready to give it such publication and distribution among the Bar of the State as your honorable body may suggest.

Since our last annual meeting, death has rudely invaded our ranks and taken from us the beloved and lamented John T. Clarke. Such unworthy eulogy as might come from our pens would be only partial tribute to his high and lofty character. We, therefore, respectfuly report the memorial presented to the supreme court by a committee from its bar as an appropriate memento of his life and services, and recommend its publication in our next annual report.

Respectfully submitted.

R. W. PATTERSON, Chairman.

W. G. BRANTLEY,

A. J. CROVATT,

C. Rowell,

H. McWhorter, Committee.

# APPENDIX No. 12.

#### THE HISTORY OF THE FIRST GEORGIA CODE.

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION BY HON, RICHARD H. CLARK.

AT ITS ANNUAL MEETING AT AUGUSTA, MAY 15, 1890.

# Mr. President and Gentlemen of the Association:

I have been honored by you with an invitation to write and read a paper on the history, execution and enactment of the original Code of Georgia—that called the Code of 1863, but really adopted in 1860. The discharge of my official duties as circuit judge leaves me but little time and thought combined for any other labor; and I have accepted the invitation because. knowing the errors that may creep into history, I deem it important that the facts connected with the making and enactment of the Code should be put upon record; and as I am the only survivor of the three commissioners, it is to be supposed I have more knowledge touching that subject than any living man.

Before entering upon the narrative and the comment it must suggest, I think it will be better understood by some preliminary observations upon the subject of Codes. In this connection it will be useful to begin at the very beginning and to show how the word code originated.

The Law Lexicographers tell us that "Code is from the Latin Codex and means the stock or stem of a tree—a board or tablet of wood smeared with wax, on which the ancients originally wrote;" and beginning that way, it proceeded until Code got to mean "An orderly collection, system or digest of laws; a compilation or collection of laws by public authority; and was first applied to the collection of laws made by Theodosius the Younger, but never attained eminence until the collection made by order of Justinian, which became par excellence The Code. The Theodosian Code was in the year A. D. 438, and the Justinian 533, nearly a century later, so that the Code of Justinian is the one with historical

pre-eminence. At this juncture the laws of Rome had been accumulating for fourteen centuries, and were comprised in two thousand books. Printed in law volumes, such as are now used, they would fill from 300 to 500 volumes. Commissioners were instructed to extract a series of plain and concise laws, in which there should be no two laws contradictory, or alike. Codification being completed, the Emperor decreed that no resort should be had to the earlier writings, nor any comparisons be made with them. Commentators were forbidden to disfigure the new with explanations, and lawyers were forbidden to cite the old. The imperial authority was sufficient to sink into oblivion nearly all the previously existing sources of law, but the new statutes, which the Emperor himself found it necessary to establish in order to explain, complete and amend the laws, rapidly accumulated throughout his long reign."

It will be observed that no authority was granted to the commissioners to change the laws, or make new laws with reference to present exigency, or to provide for the future. Because of this it has been said by eminent law writers that what Justinian did "was not codification, but consolidation, not remoulding but abridging." "By codification," the same writers say, "we understand to be reduction of the whole pre-existing body of laws to a new form, the restating it in a series of propositions, scientifically ordered, which may or may not contain some new substance, but are at any rate new in form. Justinian made extracts from the existing laws, preserving old words and only cutting out repetitions, removing contradictions, retrenching superfluities so as to immensely reduce the bulk of the whole. The matter was old in expression as well as in substance."

The opposites of Code, and which are in such general use as to-make code almost an exception, are digests, or revised statutes. These are the statutes just as enacted, with all their errors of expression, superfluity, repetition and contradictions, arranged under their respective heads with more or less system; and there are now empires, kingdoms, and important States of this Union, which have properly speaking no Code of laws. With many these digests, or revised statutes, are continued, not from mere neglect to make the advance, but purposely, because thought safer and wiser. Law commentators of very modern times say "the feasibility of doing this completely, or even to any great extent, must be deemed an open question, and that it has been discussed with great ability by Bentham, Savigny, Thibaut and others."

History informs us "that the body of the Roman laws, as published about the time of Justinian, soon fell into neglect and oblivion," and which was necessarily so, from the decline and fall of the Roman Empire, and its concomitant, the decay of learning and general intellectual darkness. About the year 1130 a copy of the Justinian Digests was found at Amlafi, in Italy; which accident, concurring with the policy of the Roman Ecclesiastics, suddenly gave new vogue and authority to the civil law, introduced it into several nations, and occasioned that mighty inundation of voluminous comments, with which this system of law more than any other is now loaded. Thus says our great English commentator, Sir William Blackstone. Time and space do not permit reference to the Institutes, Pandects, and Novels of Justinian.

I notice that the eminent English law writers seldom lose an opportunity to note the defects of the civil law and to deny any dependence of England upon that law for her system of jurisprudence, maintaining that it has its source entirely in the unwritten or common law, "whereof the mind of man runneth not to the contrary." We know that Roman conquest and influence extended to all Southern and Western Europe. We know that the Roman law is the foundation of their law, and that all their languages have their root in the Roman, or Latin, language. We know that the Roman conquest extended unto ancient Britain, and that later the missionaries of the Romish Church enlightened and christianized her people. Would it not be wonderful if no Roman law in the line of jurisprudence became blended with English customs? Would it not be just as reasonable to say that England has felt no influence in her laws or language from the Norman conquest? And here comes in a dual susceptibility, for certainly the Normans were touched by the civilization of Rome. If England felt the civilization of Rome, so of course have we in this country, as the descendants of Englishmen; and beyond that, we have felt it in our French and Spanish acquisitions of territory and population. These latter territorially have extended to vast dominions, and to quite an extent have participated in the rearing of our political and social fabrics. The writers of law and history, from whom we must derive our knowledge, are comparatively modern, and since the Norman conquest. How much are involved in mystery and uncertainty from having originated so far back, that there is no re-

origin and history of the trial by jury. We cannot doubt that this is of English origin because learned men, in whom we must confide, say, "there are no traces of it in the antiquities of the Jews, Greeks or Romans." But how or when did it begin? Its origin is so obscure that Coke and Hale both seemed to have declined to trace it. Coke contents himself with saving it is very ancient and before the conquest. Spelman, in his "Life of Alfred the Great," contends that that Prince (who lived in the sixth century) was the first founder of juries, but in truth they are much older, having had some existence among the Britons. From what we learn from Bracton, who wrote in the reign of Henry III. (1216), juries then were substantially the same as now. If, then, this uncertainty exists in this well known English institution, how are we to know that each and every custom which goes to make the English common law has no relation, directly or remotely, to the civil law?

The more we contemplate the Romans the more we wonder at and admire their grand nationality, and their superb individuality. It seems fame enough to have conquered every accessible country, and to have made their capital the largest, the richest, the grandest on the globe—to have excelled in warriors, statesmen, orators and poets, and to have made Roman valor and Roman virtue an example to the world. And yet they crowned all these with a Code of laws that has been a great factor in the civilization of all Europe down to the very present.

Henry Thomas Buckle, the immortal author of the "History of English Civilization," in one of his very interesting essays, says:

"The most splendid and durable monument of the Roman Empire, and the noblest gift Rome has bequeathed to posterity, is her jurisprudence—a vast and harmonious system, worked out with consummate skill, and from which we derive our purest and largest notions of civil law. Yet this, which not to mention the immense sway it still exercises in France and Germany, has taught to our most enlightened lawyers their best lessons; and which enabled Bracton, among the earlier jurists, Somers, Hardwicke, Mansfield and Stowel, among the later, to soften by its refinement the rude maxims of our Saxon ancestors, and adjust the coarser principles of the old common law to the actual exigencies of life."

Every lawyer who reaches middle life and has acquainted himself with the civil law will be thankful, and every lawyer who has not will learn enough to regret that he has not. Both will appreciate that it is the real foundation of genuine legal learning. The real lawyer understands the principles of law, and these principles are to be learned from the laws that lie at the foundation of the law he practices. A lawver of this sort has a great advantage over the lawver who depends solely, or nearly so. upon his remembrance of cases; for human memory and human endurance are inadequate. The common law, it is true, is a grand source from which to evolve principles, but there is vet an older system than that, which, when learned, throws a flood of light upon it, and that is the civil law of the Romans. I do not wish it inferred that I have studied that law, for I belong to that class of lawyers who has learned its importance from the want of its knowledge.

I have referred to the Code of Theodosius and to the Code of Justinian. These, as I said, with the grand empire that produces them, have passed away, and, strange to say, the next conspicuous Code of laws was not until after the lapse of at least a thousand years. This was the French Code, five in number. These were in great part the works of Napoleon Bonaparte, and the first in order bore his name. They were at first printed in one duodecimo volume under the name of "Code Civil de Francais," but for which name, in 1807, the "Code Napoleon" was substituted.

Under Napoleon's reign it became the law of Holland, the Confederacy of the Rhine, Westphalia, Bavaria, Italy, Naples, Spain and the territory of Louisiana in North America, reaching from the mouth of the Mississippi, and on its west side, nearly to its source, and was continued in force as the local law after it was ceded to the United States, and after it became one of our sovereign States.

Here the analogy is complete between Napoleon as an Emperor and the Roman emperors. As soldier and sovereign he had glory enough, but he crowned that glory with his ability and labor as a law-maker.

While his empire has passed away and his great virtues and great conquests are only memories, his Code is *living* at this very day. Verily, "the victories of peace are greater than those of war." I cannot resist the impulse to express the reflection that

has so often occurred to me, that this, the most famous Frenchman, had not in his veins one drop of French blood. His only kinship to France was that, like all his countrymen, he belonged to one of the Latin races. His father, Carlos Bonaparte, and his mother, Letidzia Romolino, were full-blooded Italians. I can imagine he was directly descended from some grand Roman of the best days of the Empire, or Republic, for his most prominent characteristics were those of the greatest pagan Romans; and yet I believe a grand Roman would have had more honor than to put his wife away for the cause he did, and after the defeat at Waterloo would have "fallen upon his sword." Strike Cæsar from history and there is no one to compare with him, except our own incomparable Washington, whose superior greatness by comparison consisted largely in his superior goodness, an element Bonaparte possessed in a very small degree, if at all. He was more honored by his enemies than was Cæsar, or any other commanding figure in history. The greatness of Cæsar received high tribute in the assassination of the Roman conspirators, but never did the greatness of mortal man receive such a tribute as did Bonaparte when his principal enemy, the powerful empire of Great Britain, made him the one war prisoner of the whole nation, and for his own safety brought to her aid the immensity of space across an ocean of water, and the slow but deadly poison of tropical air.

From this survey of historical Codes and the system of codification, it will be be perceived that Codes substantially are of three kinds:

First.—The classification of statutes of force systematically arranged, according to subject-matter, without amendment, alteration or interpolation of new law, the only change being in the correction of errors of expression, repetitions, superfluities, and contradictions, compressed in as small a space as possible, which, when done, will leave the laws in letter and spirit just as they were.

Second.—The same as the first in form, but going further and making such amendments as are deemed necessary to harmonize and perfect the existing system.

Third.—To take a yet greater latitude, and without changing the existing system of laws to add new laws, and to repeal old laws, both in harmony with it, so that the Code will meet present exigencies, and so far as possible provide for the future; and this is real codification.

To these three may be added a fourth, which have been proposed by many Solons of modern times. This is to disregard at will existing laws, and make a system substantially new, evolved from the brain and conscience of the author, being such as he thinks will be best and wisest for the State. This latter is wholly impracticable, even visionary, because the laws to govern a people should be such as time and experience have produced, and have proven necessary and useful.

The Code of Georgia answers the description of the third kind, and is the only Code in the United States which fulfills the definition. It changed or repealed existing laws, and it made new laws. Beyond this, it has a feature no other Code has. It has codified the common and statute law of England of force in Georgia, so as to give it the form and force of new statute law; and has done the same with the established principles of equity.

The commissioners made free use of the powers granted them by the law of their creation. The design of the Code was a bold one, and the execution was on the same line.

It has proven fortunate for the State that, by it, legislation necessary to perfect her political and judicial system has been secured, which, if done gradually, would not even now be done, and perhaps never. Under this change of laws, making up of new laws, and repealing of old laws, there was a grave constitutional question, but fortunately, before it was made, the Code was adopted by the Constitutions of 1861, then of '68, and repeated by the Constitution of '77. At the time of the law providing for a Code, there were but few Codes in the United States. remember five in number—those of Virginia, Alabama, Tennessee. California and Louisiana. Codes were not popular. Codes were deemed impracticable, to a particular extent impossible. Georgia had been a State nearly a century, and had not felt the need of a Prince's digest of 1837, succeeded by Cobb's of 1850, seemed all that was necessary, and when the Legislature of 1858 made provision for a Code, and a Code that would be such an innovation, the whole State was surprised. Indeed the Legislature was itself taken by surprise. The history of it is this: George A. Gordon was a member of the House from Chatham. He was a young lawyer, aged only twenty-eight years. He had married in Huntsville. Ala., and of course made visits to that place. There he intermingled with many of the best lawyers in that State. He heard them extol the Code of Alabama, adopted in 1852. He examined

and fell in love with the Alabama Gode, particularly with its plan and style. He determined Georgia should, if he could accomplish it, have a Code on the plan of the Alabama. He went further. He conceived the idea of embracing a codification of the common law of force in Georgia. In pursuance of this purpose, you will find by reference to the House Journal of 1858. that on November 29th, among other bills introduced by Mr Gordon, of Chatham, was one to provide for the codification of the laws of Georgia. By that bill the prospective Code was to be on the plan of the Alabama Code, "which should, as near as practicable, embrace, in a condensed form, the laws of Georgia, whether derived from the common law, the constitutions, the statutes of the State, the decisions of the supreme court, or the statutes of England in force in the State." The law also prescribed that the Legislature was to elect three commissioners to execute the work. It is manifest from this statement that the design of the Code. including the feature that distinguishes it from other Codes, originated with Mr. Gordon. There is some doubt as to who is the author of our Judiciary Act of 1799, that then distinguished Georgia from her sister States mainly by abolishing special pleading, but there is no doubt that George A. Gordon was the originator of the Code of Georgia, and that his efforts and influence secured the law requiring it. This, together with the success of the Code, makes a brief reference to his history appropriate. was the oldest son of Wm. W. Gordon, of Savannah, a distinguished lawyer of that city, prominent officially in city, county and State affairs, the first president of the Central Railroad and Banking Company, and who died as far back as 1842, and to whose memory a monument was erected in Savannah. He (George) was born September 27th, 1830, and admitted to the bar January 19th. 1852. He has been a member of both the Senate and House. In the war "bewteen the States" he was colonel of the 63d Georgia Regiment. He served around Savannah until March, 1864, when his regiment was transferred with Mercer's. brigade to General Johnston's army at Dalton; while at Kennesaw he contracted typhoid fever, from the effects of which he never fully recovered. In 1865 he moved to Huntsville, Ala.. and gradually declined from disease contracted during the war until he died in 1872.

I had the pleasure of his personal acquaintance. Like his fatherhe had a superior mind and well adapted to law,—was practical and useful; and in his appearance and manners was a fine specimen of the thoroughbred gentleman of the tide-water region of Georgia and the Carolinas. He was an older brother of the present member of the House of that name, from Chatham county. He is the grandson of Ambrose Gordon, a captain in the cavalry regiment commanded by Col. Wm. Washington, in the army of General Greene. After the revolution he settled in Augusta, Ga. From there moved to Sayannah, where he died in 1804, but his remains were taken for interment back to Augusta.

The Legislature elected as the Code Commissioners Iverson L. Harris, David Irwin and Herschel V. Johnson. Judge Harris and Ex-Governor Johnson declined to accept, which left Judge Irwin the sole commissioner. They declined, because they did not believe that it was possible to successfully codify the common law, and if so, the time presented was too short. The Legislature had adjourned, and as the work was to be completed in two years, the then governor, now United States Senator Brown, had to appoint, and was much embarrassed in the selection of proper persons. Not but that there were many Georgians competent for the common routine of the work, but where could one be found who had the ready learning and ability to codify the common law? After careful inquiry and investigation, he concluded there were but two men in the State equipped for the work. These were John C. Nicoll, of Savannah, Judge of the Federal Court, and Thomas R. R. Cobb, of Athens. Between the two, he thought it better to tender the appointment to Mr. Cobb. He accepted. Without my knowledge a few friends presented my name to the governor, and I was appointed to fill the remaining vacancy. The acceptance by Mr. Cobb at once gave confidence in the success of the enterprise. He had had a thorough education, both as a scholar and a lawyer. He had large experience in the practice, and was Professor in the Lumpkin Law School attached to the State University. He had lectured to the students on every branch of law, and to crown the whole he was gifted with one of the brightest and strongest of intellects, supported by a physical strength scarcely surpassed.

The commissioners soon met at Atlanta, to agree upon the method of proceeding, and entered vigorously and sincerely upon the work. We parcelled it between us in this way: To myself was assigned Part 1st, "the Political and Public Organization of the State." To Mr. Cobb, 2d and 4th Parts, "the Civil Code"

and the "Penal Laws," and to Judge Irwin the 3d Part, "the Code of Practice." The general preliminary provisions were made after the other parts were completed, and is the work of Mr. Cobb, amended and added to by the other commissioners. As each commissioner finished a title, he had two copies made and sent to each of the others, so each could examine the work of each, to be prepared with suggestions of changes when we met to pass upon the whole work. This making the first draft, and then two copies, was very laborious, and I had to employ an assistant to make the copies as I proceeded, so that when I was done the original the copies would also be done. We had no shorthand or type-writing then, and every word had to be written in full and with the pen. Of the two years allowed, I devoted at least one year in all exclusively to the Code, but it was not consecutively done, except for three or four months at a time. When we had finished, in August, 1860, we met again at Atlanta, and went through the whole work, section at a time. By working from eight till one, and from two to seven, and from eight to ten or eleven, or as long as we could, we finished by twelve o'clock Saturday night, having begun Monday morning. It was working more hours per day for several days than I have ever done before or since. Mr. Cobb seemed not in the least fatigued, but Judge Irwin on Thurday said he could not appear at night any more. and if we insisted on meeting then we would have to go on without him. Mr. Cobb had an engagement the next Monday that could not be postponed, and we had to proceed, for the engagements of each of us were such as to make another meeting. before the Committee of Legislature would assemble the following October, impracticable.

As I said, we finished at twelve Saturday night, and I do not think that before or since I was ever so wearied mentally. Mr. Cobb seemed as fresh as the morning we started. We conversed on the difference in our conditions, and he told me he had never felt weariness from mental labor; and no matter what engaged his mind, in five minutes after retiring at night he was asleep, that he carried no thought or trouble to bed with him, and that whenever he chose he could close his mind like shutting a book. He said before he slept that night he had to draw a short bill in equity to save the return day of a court in his circuit. He was the most perfect specimen of "a sound mind in a sound body" I have ever seen. He expressed to me regret that he could not

perfect his manuscript by erasing and interlining as I did. I told him the reason was he got it right the first time. His manuscript was almost without erasure or alteration. Another peculiarity of it was he used only two punctuation marks, the dash and the period. The dash did the duty of comma, colon and semicolon. I said we met at Atlanta; shall I omit to say where? It was at the Atlanta Hotel, Dr. Joseph Thompson, host and proprietor. The doctor extended to us all the hospitality and courtesy possible. Now he, as well as Judge Irwin and General Cobb, "have passed over the river;" and even the dear old hotel, the second home of so many Georgians, was destroyed by the general conflagration which followed the order of General Sherman.

It will be remembered that the law required the commissioners to adopt as a model the Alabama Code of 1852. Alabama is the daughter of Georgia. All her territory was derived from Georgia. Georgia furnished much of her early population, and among them some of the leading statesmen. Wm. Wvatt Bibb, commonly called Dr. Bibb, was her first and only territorial Governor, and the first governor of the State. Chas. Tait was her first judge of the United States Court, and Jno. A. Cuthbert one of her State judges. John A. Campbell and Daniel Chandler were among her most eminent lawyers. At this day some of her highest officials are native Georgians. Her United States Senator Pugh and Chief Justice of her Supreme Court, Clopton, are natives of Georgia. The original Bibbs, Gilmers, McGeehees. Gindrats and others went there from Georgia. In the early history of the State there were much talent and enterprise soon developed. Her Judiciary at once became famous. The reports of her supreme court were recognized authority in all the States. and of the highest repute in Georgia. It is not surprising then that she was so much in advance of Georgia in having a Code of her own, and that Georgia adopted it as the model of hers. Her codifiers were John J. Ormond, Arthur P. Bagby and George Golthwaite. All are now dead, and each is entitled to at least a brief notice.

Judge Ormond was elected to the bench of the supreme court about 1837. He continued in that office until his resignation in 1848. He resumed the practice of law at Tuscaloosa, and there died in 1865.

Arthur P. Bagby came to Alabama from Virginia when she

was yet a territory. In 1837 he was a member of the Legislature. In 1841 he was appointed to fill a vacancy in the United States Senate, and elected for a full term from 1843 to 1849. In 1848, while a member of the Senate, he was appointed by President Polk Minister to Russia. Upon the election of General Taylor to the Presidency, he resigned his mission, came home, and fixed his residence in Montgomery, where he died in 1858, not yet sixty years of age. He had a magnificent personal presence, and, as United States Senator, attracted the attention of all visitors.

Geo. Golthwaite was a native of Boston, educated at West Point, and came to Montgomery in 1830, elected to circuit court bench in 1843, and to supreme court bench in 1851. He served there a few years, and then retired to the practice of law in Montgomery. He held no political office before the war, but, in 1870, was elected to the United States Senate. While there his health gave way, which impaired his usefulness. He died at Tuscaloosa while undergoing medical treatment.

The present Code of Alabama was adopted only a few years back The revisers were Robt, C. Brickell, Peter Hamilton and John P. Hamilton. It is in two volumes—one the Civil the other the Criminal Code. The comparison of these with the Code of 1852 will impress one with the accumulation of laws from the developments of thirty-four years. It will also suggest the necessity of separating the Codes when the whole body of laws becomes so voluminous. Our Code is already too ponderous. That necessity has been partially met by Judge Hopkins' admirable penal Code annotated. It is of invaluable assistance to the bench and bar, and I frequently have occasion to feel my gratitude to its able and laborious author. When our Code is again revised it will be advisable to adopt that, with the necessary additions and citations, as the Penal Code of the State, thus eliminating the penal laws from the general Code, and thus avoiding the large and cumbrous volume our next Code must be unless that is done. The utility of it will be manifest by an examination of the present Code of Alabama in two volumes.

The next meeting of our commission was at Milledgeville in October of same year, before the joint committee of the Legislature to examine and report upon the Code. This committee, on the part of the Senate, were Hines, Holt, Danl. S. Printup and Wm. W. Paine, and, on the part of the House, Geo. N. Lester, Isham S. Fannin, Wm. G. Deloney, Miles W. Lewis, Chas. N.

Broyles and Chas. J. Williams. B. B. DeGraffenreid was elected secretary of the commission and committee.

We went through the whole Code, reading each section. Each commissioner read the sections of his part. There was opposition to some of the sections, but serious only occasionally; but the result was, the whole work was accepted and adopted by the committee. Their clear, comprehensive and conclusive report to the Legislature will be found in the preface to the original Code, and reproduced in the same way in the Code of 1882. Hon. Hines Holt, of Muscogee, one of the Senate's committee, an able lawyer and one of the most graceful of men and fluent of speakers. scanned the work of the commissioners more critically than any other member. The commissioners, among themselves, concurred as to every law in the Code except three. The dissenting one was myself. I made my objections known to the committee, but, after argument against me by Messrs. Cobb and Holt, my objections were overruled. Afterward the Legislature sustained me by excepting one in the Act adopting the Code.\* The other was soon repealed, and the last, though vet in the Code, at Section 2293, prescribing "no abatement of rent" for destruction by fire or other casualty, is almost a dead-letter, because the written contracts for rent have since become almost stereotyped to the contrary.

After the code became a law, the next thing was to provide for its printing and publication in book form. The commissioners were allowed to let out the contract, and to supervise the work. The contract was awarded to Col. John H. Seals, then the owner of a job office and the editor and proprietor of a paper devoted to temperance and literature, at Atlanta, called The Temperance Crusader. As I resided so remotely from the point of publication, it was agreed that Messrs. Cobb and Irwin should attend exclusively to the supervision. The contract was made with Col. Seals at Milledgeville in January, 1861. In two months secession came, and in three months the war between the States began. About the 1st of June I received a letter from Gen. Cobb stating he had to leave for Virginia, then fast becoming the seat of war, and I must come at once to Atlanta and take his place in the supervision. Within a week I went to Atlanta, and, after getting there, found that the work had to be suspended for

<sup>\*</sup>Repealing Act of 28th February, 1856, defining liability of husband for debts of the wife before marriage.



the want of the contract kind of paper, and that Judge Irwin was very low at Marietta and his life almost despaired of. No proper paper could be obtained during the summer, Judge Irwin yet lingered, and in the fall I had to return home. The paper was to be a kind of linen, and was made generally from old sails of vessels. The war shut out all ships from southern ports, and the materials could not be obtained. Col. Seals had to do the best he could. He procured the best paper to be found in the Confederacy at Raleigh, North Carolina, and some time in 1862 finished and published the books. He was likewise embarrassed as to the binding, and failing to get the contract leather, had to substitute, as far as possible, boards. A change in the paper will be found about two-thirds through the book, and some of the volumes are bound with leather and some with boards.

The entire supervision, after Gen. Cobb left, was by Judge Irwin, assisted by his son-in-law, afterward Colonel, and now Judge, Geo. N. Lester. Considering the difficulties which presented themselves, it is wonderful that Col. Seals succeeded as he did in getting out the Code. From the increase in the price of materials, and the change for the worse in the currency, he lost money by his contract, and too much praise can not be awarded him for his energy and fidelity. A person not posted, and seeing Col. Seals, now the editor and owner of the Sunny South, on the streets of Atlanta, would not suppose he could be the Seals that published the Georgia Code twenty-nine years ago. I call him the ever-youthful Seals.

The Code, therefore, was born during the year. This fact, together with the troublous years of reconstruction, will account for its failure to create at once the sensation in the legal and literary world it otherwise would have created. In fact it is not till within a few years past it is receiving the notice it should have received long ago. Its distinguishing feature, and its merits generally, are being discussed, and gradually the "legal lights" are waking up to the important fact that it is the only Code in the United States where the common law, and the principles of Equity have been reduced to a series of separate and distinct propositions, having the force and form of statutory law.

What the most learned of lawyers said could not be done, has been done, and successfully done. That it has been successfully done is proven from the overwhelming fact that it has been on trial for twenty-seven years, and has been found adequate to every emergency. The credit of its distinguishing feature belongs to General Cobb, as that was the part assigned to him and was solely his production, except as amended by the other commissioners. And likewise the part assigned to each of the other commissioners was exclusively the work of each, except as likewise amended. When completed, it was, as I have said, a Code that filled the definition of true codification. Besides making a system out of the existing laws, both common and statute, it repealed old laws and enacted new laws, but so as to be consistent with the legislation of the past, and for the purpose of making that legislation more effectual and complete. As an illustration of a repeal of law. I refer to the repeal of the right of appeal from one iury to another in equity cases: and for an illustration of a new law. I refer to the law making for the first time seduction a crime. and which after twenty-seven years yet remains a crime, under which men have been convicted and sent to the penitentiary. This was made a crime and with the punishment prescribed, at the suggestion of General Cobb. He felt a deep interest in this. We concurred that it should be made a crime, but differed as to the penalty, but finally agreed. Mr. Cobb thought that the seducer would pose as a hero through the bars of the jail, and would become the admiration of other enterprising young men, who would not object to being behind the bars themselves, for an exploit that would so much distinguish them. This was, perhaps, the only new law, or change of law, that could be called an The most of new laws, and change of laws, will be found in the first part, which, as stated, was the work of myself. I found our legislation in many respects not only incomplete, but defective, and I did not hesitate to make a law if in harmony with our legislation, when I thought necessary; and if I found a provision in the Code of Alabama to suit, I made it instanter the law of Georgia. Many of the regulations touching State Houes officers, and general regulations as to officers and offices, were transferred from the Alabama Code. There is not time to specify the sections of our Code that are actually or substantially taken from the Alabama Code. I can only call attention to two. not have any method of procedure for disbarring a recreant attor-That in the Code I just copied from the Alabama Code. I found there a set of rules for the government of attornevs-at-law in the discharge of their professional duties. I likewise copied that. Judge Hopkins aptly called it the "Lawyer's Sermon on the Mount." Whether it is original with the Alabama codifiers, I am not learned enough to say, but I can say, if original, the author may at once be the object of envy and admiration.

I found the laws touching our county organizations defective. and beginning with making each a body corporate. I made many new regulations. The important office of county treasurer was without any adequate law for the guide of that official. were a few short statutes, which could be compressed into a few sections of the Code. If you will examine the laws as they now stand in the Code, you will find the office systematized, and I am proud to say it has worked well practically. Whenever necessary. I did not hesitate to make new legislation for the ordinary, the Clerk of the superior court, and the county sheriff; and I even laid my hands on the justices of the peace and constables. found the public road laws, from their number and defects, difficult to codify, and the outcome, including the changes, was as vou see. As in the case of the county treasurer. I found next to nothing as to "private ways." The system you find in Code was my own. It is yet preserved. I found no prescribed method of procedure in the important matter of election contests. I originated the present regulations, and they are the laws of to-day. Such new additional regulations are interspersed through Part First. Such new laws can be told by the absence of marginal annotation. As a general rule, throughout all the parts, if there is no such annotation it is statutory law for the first time, by the Code. The codifiers did not make this annotation in the original Code for a reason satisfactory to themselves. It appears for the first time in the Code of 1873, then repeated and extended in the Code This, together with the citations of the Georgia Reports, and other authorities, has rendered the usefulness of the Code complete. That of 1873 is the work of Mr. Walter B. Hill, and will forever bear testimony to his talent, learning and industry. The additional citations to that of 1882 is jointly the work of himself and Col. C. Rowell, who well, ably and faithfully performed his part. I applied to Dr. Thomas Green, the then superintendent of the Lunatic Asylum, for his suggestions and adopted them. I likewise applied to Wm. L. Mitchell, one of the Trustees of the State University, and adopted his suggestions. The city of Savannah being largely interested in the new Code, I applied for information to their mayor, Dr. Richard D. Arnold.

The result was, the city council instructed their attorney, the Hon. Edward J. Harden, to report thereon, and besides to make a new code for the city that should be in harmony therewith. The chapters on "Health, Hospitals, Infections and Quarantines," and "On Ships and Seamen," inclusive of "Pilotage," are his work. The members from Chatham, at the adoption of the Code, procured the placing of the city code (the work of Judge Harden) in the Code of the State, and there it has since remained.

It is impossible to particularize even the important changes in the other "Parts" of the Code. While there were not so many as in the First Part, there were several, and very important, which have likewise stood the test of time.

As is well known, the Fourth Part, or penal laws, are almost entirely a reproduction in form and substance of the Penal Code, 1833, and that part required but little labor.

In 1816, and again in 1817 the penal laws, both common and statute, were codified. The Code of 1833 was a revision of the Code of 1817, and that was also a revision of a prior Code. The necessity of a Penal Code early manifested itself, because nearly all our crimes were those of the common law, and as soon as the State had a penitentiary a Penal Code was enacted. Before this nearly all felonies were punished capitally. Wm. Schley, John A. Cuthbert and Joseph Henry Lumpkin were the commissioners of the Code of 1833. All are dead. The first was afterwards Governor of Georgia, the second had been a member of Congress, moved to Alabama in 1835, and then died a few years ago at the advanced age of 94. The third was one of the original judges of our supreme court, was the Chief Justice thereof for many years, and at the time of his death on 4th June, 1867 (vide 36th Georgia).

When the work of the committee of the Legislature to examine and report upon the Code was completed, the manuscripts of the codifiers were transcribed by the secretary upon enrolling paper, and was by them presented to the Legislature with their very able and satisfactory report. That transcript, together with the law adopting it, should have been deposited in the office of the Secretary of State, duly signed and certified, there to remain on file as any other original law. Some twenty years since, having cause to refer to that record, to compare with it some word or phrase in the printed Code to see if such was correct, I applied at the office of Secretary of State, and to my astonishment it could not be found; nor was it remembered

that by the blunder of some one the printing was done from that enrollment, instead of, as it should have been, from the manuscript of the codifiers.

Since the law adopting the Code nearly thirty years have passed. The work was done within the two years preceding. How many. great and radical are the changes in any period of thirty years. but in the thirty years past are embraced the four years of war. Who can compute how many years of peace these four of war are equivalent to? Before Mr. Cobb's labors in the production of the Code were complete in May, 1861, he left for the seat of war in the command of Cobb's legion, with the rank of colonel, and in December, 1862, during the battle of Fredericksburg, and while holding the rank of brigadier-general, he was killed, and, strange to say, from the place he fell could be seen the house where his parents were married. He had then not attained to the age of forty. and would not have until the next 16th of April. He was among the very grandest lawyers of the State. But few were his equal not one his superior. See 33d Ga. for Judge Charles J. Jenkin's most excellent and eloquent eulogy on General Cobb. It is well known that the constitution of Georgia, adopted in 1798, was not changed by a convention until 1861, and that in the last named vear another constitution was adopted. It is not so well known that it was adopted at the suggestion of Mr. Cobb. and that the original draft was made by himself. He brought it with him written in full when he came to Savannah, where the adjourned convention assembled. I saw it before any action was taken upon it. By reference to the proceedings of the convention it will be found that it was on Mr. Cobb's motion the Committee on the Constitution were instructed to revise the constitution of the State.

That was one of the standing committees of which he was Chairman, and as said Chairman he reported his own constitution with the sanction of the committee. Substantially as reported it was adopted by the convention. So for seven years the people of Georgia lived under Tom Cobb's constitution, and for nearly thirty years they have lived under a code of laws that in its most difficult and important parts was executed by him.

While Mr. Cobb in his constitution and the Code adhered to the old fundamentals, yet he possessed an order of mind improved by learning that qualified him for originating Codes and



constitutions for the government of States, evolved from his own moral and intellectual consciousness, so far as man could, but no man can. A Code of laws must be founded on the developments of time and no State or nation is prepared for a Code of laws until it has gradually enacted a series of laws, from which, by harmonious amendments and alterations, a wise system may be formed. Such a genius as Jeremy Bentham could condemn old laws and their administration, and delude himself with the belief he could invent new systems suitable for the great empire of Great Britain or Russia.

That man could read Latin at three years of age, and the same precocity kept even with additional years. He astonished the world with his genius and learning, and invented the very word codification we now so much use, and which has gone into the dictionary, together with other words of his own invention, like utilitarian, and international; and that was only about a century ago. Yet commoner minds, learning wisdom from experience, are better legislators than he was. I take it that David Dudley Field has some such mind, and perhaps has put in his Code too much innovation, and too much of theory unsupported by experience or history, and that that may be the reason the New York Legislature has so far failed to adopt his Code. Robert Toombs once said that men with such minds would undertake to write in fifteen minutes a constitution for the Government of Heaven. He, however, was rather too much on the other extreme, and carried it to the extent of doubting the wisdom of the Georgia Code. and hence of any Code.

Returning to the thought of the changes made by time, it is also true that Judge Irwin, another of the codifiers, has already passed to the great beyond. He was a native Georgian, born in the famous old county of Wilkes, on the 8th of January, 1807, and died on his farm near Marietta, in the county of Cobb, on November 26th, 1885. During his long and useful life he filled various offices and places of public trust—too many to specify, and during the times of the Whig and Democratic party, he was one of the leaders of the Whig party in Cherokee, Georgia; and whenever that party administered the State government Judge Irwin was sure to be honored. He was a man whose mind was conspicuous for strong, common sense, and his heart for superior integrity. His most prominent personal characteristics were his amiability, his affability; and a nice sense of humor, which spoke

from his eyes as well as his tongue. He was a sound lawyer, a good judge and a good man. As judge of the Blue Ridge circuit there are naught but pleasant memories of him, and my association with him in making the Code was of the most pleasant kind. I can even now feel, as I did then, the softening influence of his presence, which was due to the pure atmosphere that always surrounds a true gentleman.

As Mr. Cobb and Judge Irwin are dead, so are all the legislative committee, including its secretary, except Judge Lester, and Mr. Broyles, who has removed to the far west. Of the thirteen actually connected with the Code only three survive, and it cannot be long until the same can truly be said of us. Then there will be no one who can tell from personal experience the history of the Georgia Code, which perhaps makes this narrative necessary for the information of the young men of to-day, and of those who are to follow us. Of the committee I knew intimately only Wm. W. Payne, Wm. G. Deloney, Miles W. Lewis and Charles J. Williams, and am qualified to speak of them, and them only.

I wish there were both time and appropriateness to make comment upon each. These were all interesting men. Each had some peculiar trait that gave a charm to his society. Deloney like Cobb lost his precious life in battle. Williams died from disease developed by the war. Lewis and Payne survived the war, as did all the other members of the committee.

I have told my story of the past, now what shall be said of the future? I mean the future as it respects our laws. As time has made, so time will bring its changes. Future development will show the necessity of new laws, and amending or repealing old laws. From an experience of forty-six years, and sixteen of them as judge, if I had the power there is important legislation I would enact. Some would first require a change in our constitution: and in time we will have a revision of the present constitution. On this occasion I can only mention a few that are prominent; and I purposely do so that my suggestions may be considered. I find the existing laws of master and servant inadequate to justice in the present state of industries and enterprises, and the immense number of middle men and employees. The most of these laws have come down to us from a time when they were made for the farmer and his cropper; for a blacksmith and his striker; for a boss mechanic and his few journeymen; for a merchant and his few clerks; and for a householder and his few domestics. The courts find great difficulty in applying these old laws to present cases, and the result is either the court has to expound the law in such a manner as savors of legislation, or plain justice has to be defeated—gross wrong to be sanctioned.

Our law of homicide should be revised so as to eliminate that called manslaughter, or differently define what manslaughter is, so as to make it possible there really may be cases of voluntary manslaughter, for, according to the letter and spirit of the present law, it is with very few exceptions either murder, justifiable homicide or involuntary manslaughter. There should be murder in the first and second degrees, distinctly defined, as there is in most of the States.

If to kill one for violating the marital rights, is justifiable homicide instead of manslaughter, as it was by the common law. "because it stands on the same footing of reason and justice" as the other grounds of self-defence set forth in the Code, the Legislature should so say and declare the circumstances of justification, and not leave it as it is to the judgment or caprice of every jury.

We should have a law defining what shall constitute an assault with intent to murder. The present law restricts it to "the use of a weapon likely to produce death," whereas it is well known there may be such an assault without the use of such a weapon, and so our courts have held. That should not be left to judicial construction which should be a legislative declaration. It should further declare, if a weapon likely to produce death is used, to what extent is it evidence of an intent to murder.

There should be no appeals from justice courts to a jury in the superior court. Such appeals, and as they are now warranted by consent, amount to giving the superior court original jurisdiction in cases from fifty to one hundred dollars, and they should all come to the superior court by certiorari. Every judge who has tried such cases, involving perhaps not more than sixty dollars, can feelingly tell how they take just as much time as if the amount involved was a thousand dollars, and how they obstruct the important business of the court, both civil and criminal.

The idea of taking twelve "upright and intelligent" male citizens to try such small cases is absurd, and the enormous extra court expense they entail is a wrong to the tax-payers.

In fact, it may be said, that twelve jurors are more than are needed in civil cases. Five jurors with the proper qualifications can pass upon the issues better than twelve, especially when the twelve are selected without any regard to their special qualifications for such work. Occasionally have I tried cases before a jury of twelve men, when there was not a juror competent to calculate the amount due on a note where there were several credits.

In criminal cases, it is likely the time will never be reached, and should not be, when less than twelve jurors will be deemed competent to pass upon a felony; but to require the concurrence of the twelve to make a verdict operates often to acquit the guilty, and sometimes to convict the innocent. In every strongly contested case, there is a probability of from one to three men getting on the jury, who go on with a determination to find the defendant guilty or not guilty, no matter what the evidence or the law is. Therefore, two-thirds or three-fourths of the body should be competent to render a verdict. If the verdict is in favor of the accused, he goes free. If against him, and it should be a wrong verdict, he is safe in the hands of the presiding judge; and if not, he has his appeal to the supreme court.

The powers of a court of appeals should be given to our Supreme Court, so that when the Judges know the justice of the case has been reached by the judgment of the court below, they should have the power to affirm that judgment, although errors may have been committed. The errors sufficient to send the case back for another trial should be such errors as have "led to the verdict," and which verdict is manifestly or doubtfully against the justice of the case. This will not only execute the object of law, which is the attainment of justice, but will protect lawyers and citizens against the great labor and expense of so often trying cases twice, and even more than twice.

The demands of justice should be paramount to errors merely technical. In nine times out of ten the justice of a case is its law, and when not, it is from some rule having its foundation in a sound public policy which in itself is just. The administration of law is not a commodity which can be measured with a tape line, or weighed with the scales of an apothecary. The rights of the State and of her citizens, in their lives, liberty and property, are too sacred for that. The true test of the result of every issue is the justice it accomplishes. It should be superior to every other consideration concerning or affecting the citizen. No nation or State can permanently endure which does not make justice the foundation of her legal and political polity. In the language of Geo. Wm. Curtis, "The old empires fell because the

governors forgot to put justice into their governments." Therefore, I close with an earnest plea for justice. It is not only indispensable in all legal controversies, but affords a remedy for our social and political troubles, if every citizen of every race would resolve to govern his conduct by its dictates.

# CONSTITUTION AND BY-LAWS.

### ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

#### ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided.

#### ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the next year ensuing, but the same persons shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

#### ARTICLE IV.

At the meetings of the Association, all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and, in such case, placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

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#### ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

### ARTICLE VI.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

# ARTICLE VII.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each:

- 1. On Jurisprudence and Law Reform.
- 2. On Judicial Administration and Remedial Procedure.
- 3. On Legal Education and Admission to the Bar.
- 4. On Grievances.
- 5. On Memorials.
- 6. On Federal Legislation.
- 7. On Interstate Law.
- 8. On Legal Ethics.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

# ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

# ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of



publication shall be made by the Secretary.

#### ARTICLE X.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

#### ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-Laws.

# ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.\*

The charter was duly obtained. See First Report, page 16.

# BY-LAWS.

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The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

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The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$100 per annum.

III

The Treasurer shall collect and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall, at all times, be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office, so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the programme for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep

a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and to attend to the publication and distribution of the same. They shall have no power to make the Association liable for any debts amounting to more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

# V.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

- 1. Reading minutes of preceding meeting.
- 2. Address of the President.
- 3. Report of Treasurer.
- 4. Report of Executive Committee.
- 5. Elections, if any, to membership.
- 6. Reports of other standing committees.
- 7. Report of special committees.
- 8. Election of officers and appointment of committees.
- 9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

### VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

### VII.

In pursuance of Article VII of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in

the law, and of recommending such, as in their opinion, may be entitled to the favorable consideration of the Association.

- 2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association, such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge, from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.
- 3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose, in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

- 4. A Committee on Grievances, who shall be charged with the hearing of all complaints, which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of the Bar, and the administration of justice, and to report the same to this Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.
- 5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief and appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure

Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meetings; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.

6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such federal legislation, proposed or enacted, as may be of interest to the legal profession, and especially such as affects the federal judicial system, and procedure and practice in the federal courts.

7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end; and, where such action is favored by this Association, to bring the same to the attention of the General Assembly and to endeavor to secure the adoption of the legislation so recommended.

& A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relation of lawyers to the courts, the public, their clients and each other; with the further duty of taking such actions as they may deem best in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention.

### VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its mem-

bers a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.\*

### IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanation, the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of \$\$420 and 434 of the Code, inclusive.

# X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

#### XL

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his prede-

<sup>\*</sup>As to payment of expenses of committees, see Report for 18%-86, page 70. As to printing committee reports in advance of the annual meetings, see Report of 18%-87, page 6.

cessor, but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten day after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

#### XII

All annual dues to this Association shall be paid in advance by each member upon his election, and in advance one month before each annual meeting for each year during membership, and any member failing to pay his annual dues in such manner, shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

### XIII

These By-Laws may be amended at any stated, adjourned, or annual meeting of the Association by a majority vote of those present.

### XIV

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer, that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

# XV.

The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee, the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during any year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

# XVI.

No resolution complimentary to any officer or member shall be entertained.

# XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting; and, if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

# OFFICERS AND COMMITTEES.

# 1890-91.

#### PRESIDENT:

# FRANK H. MILLER.

#### VICE-PRESIDENTS:

First—M. J. Clarke, Third—P. W. Meldrim, Second—C. N. Featherston, Fourth—M. P. Reese, Fifth—George D. Thomas.

### EXECUTIVE COMMITTEE:

T. J. Chappell,

E. D. Peabody,

Dupont Guerry.

L. F. Garrard,
B. P. Hollis,

AND THE SECRETARY AND TREASURER ex officio.

Secretary: Treasurer:
JOHN W. AKIN. Z. D. HARRISON.

# STANDING COMMITTEES OF THE GEORGIA BAR ASSOCIATION FOR 1890-91.

#### ON JURISPRUDENCE AND LAW REFORM:

George A. Mercer, J. C. C. Black,								Savannah.
J. W. Parks, .								
T. P. Westmorelan	ıd,							Atlanta.
W. H. Dabney								Rome.

	Walter B. Hill, Macon. Robert Falligant, Savann J. M. Pace, Coving John Peabody, Columb Sylvanus Morris, Athens  ON LEGAL EDUCATION AND ADMISSION TO THE BAR.  J. A. Billups, Madiso I. E. Shumate, Dalton. W. H. Floming
	John Peabody, Columb Sylvanus Morris, Athens  ON LEGAL EDUCATION AND ADMISSION TO THE BAR.  J. A. Billups, Madiso I. E. Shumate, Dalton.
	ON LEGAL EDUCATION AND ADMISSION TO THE BAR.  J. A. Billups,
<u></u>	ON LEGAL EDUCATION AND ADMISSION TO THE BAR.  J. A. Billups,
<u></u>	ON LEGAL EDUCATION AND ADMISSION TO THE BAR.  J. A. Billups,
<i>_</i>	J. A. Billups,
/3	I. E. Shumate, Dalton.
1	W H Floring
-	W. H. Fleming, August
	Hoke Smith, Atlants
	A. C. Wright, Savann
=	ON GRIEVANCES.
	William M. Reese, Washingto
	Chas. Z. McCord, Augusta.
	Dupont Guerry,
	J. H. Martin,
	A. J. Cobb, Athens.
	ON MEMORIALS.
	Charles C. Jones, Jr.,
	R. L. Berner, Forsyth.  A. R. Lawton, Jr., Savannah Samuel Barnett, Atlanta.
	A. R. Lawton, Jr., Savannah
4	Samuel Barnett,
2	F. H. Colley, Washingto
	ON FEDERAL LEGISLATION.
	W. G. Charlton, Savanna
	Pope Barrow, Athens.
	Alexander King
	Alexander King, Atlanta. Julius L. Brown,
1	John S Davidson
	John S. Davidson, Augusta
	ON INTERSTATE LAW.
	M. H. Blanford, Columbi
	W. R. Hammond, Atlanta.
	Fleming DuBignon, Savanna.
	Henry Jackson, Atlanta.
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	A. H. Davis, Atlan

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J. M. Neel, .							Cartersville.
A. H. McDonnell,							Savannah.
S. G. McLendon,							Thomasville.
A. W. Smith, .						,	Atlanta.
Morris Brandon,							Atlanta.

# **OFFICERS**

OF

# THE GEORGIA BAR ASSOCIATION

# FOR PAST TERMS.

# 1888-1884.

PRESIDENT:

I. N. WHITTLE,	Macon.
VICE-PRESIDENTS:	
First—Charles C. Jones, Jr.,	Atlanta. Columbus. Athens. Savannah.
1894-1885	
W. M. REESE,	Washington.
VICE-PRESIDENTS:	
First—F. H. MILLER, Second—L. F. GARRARD, Third—W. S. BASINGER, Fourth—W. M. HAMMOND, Fifth—H. P. Bell, Secretary—W. B. Hill, Treasurer—S. BARNETT, JR.,	Augusta. Columbus. Dahlonega. Thomasville. Cumming. Macon. Atlanta.

# 1885-1886.

# PRESIDENT:

Joseph B. Cumming,		•		•		Augusta.
v	CE-F	RESI	DENT8	):		
First—P. L. MYNATT, Second—W. A. LITTLE, Third—J. M. PACE, Fourth—W. H. DABNEY, Fifth—F. G. DUBIGNON, Secretary—W. B. Hill, Treasurer—S. BARNETT,	· · · · · · · · · · · · · · · · · · ·	· · · ·	· · · ·	· .	•	Atlanta. Columbus. Covington. Rome. Savannah. Macon. Atlanta.
_	188	6-18	87			
	PRE	SIDE	NT:			•
CLIFFORD ANDERSON,	•	•	•	•	•	Macon.
VI	CE-P	RESI	DENTS	:		
First—N. J. Hammond, Second—W. A. LITTLE,	•			•	• '	Atlanta Columbus.
Third—A. S. ERWIN.		•	•	•		Athens.
Fourth—A. H. Hansell, Fifth—J. C. C. Black, Secretary—W. B. HILL,		•		٠.	٠.	Thomasville. Augusta.
Secretary—W. B. HILL, Treasurer—S. BARNETT, J	R.	•	•	•		Macon. Atlanta.
Trouburor of Dannerry	<b></b> ,	•	•	•	•	numer.
	188	7-18	88.			
	PRI	ESIDE	— NTS:			
WALTER B. HILL, .	•	•	•	•	•	Macon.
	CE-P	RESI	DENTS	•		a 1
First—Geo. A. MERCER,	•	•	•	•	•	Savannah.
Second—Pope Barrow,			•	•	•	Athens.
Third—I. E. SHUMATE, Fourth—B. P. Hollis,		. •		•	•	Dalton. Americus.
Fifth—E. N. Broyles,		-		•	•	Atlanta
Secretary—J. H. Lumpkin				•	•	Atlanta.
Treasurer—S. BARNETT,			•	•	•	Atlanta.

# PRESIDENT: MARSHALL J. CLARKE. Atlanta. VICE-PRESIDENTS: First-J. C. C. BLACK. Augusta. Second-A. S. CLAY, Marietta. Third—C. C. KIBBEE, Hawkinsville Fourth—A. T. MACINTYRE, JR., Thomasville Secretary—John W. Akin, Cartersville. Treasurer—S. BARNETT, JR., Atlanta. 1889-1890. PRESIDENT: GEO. A. MERCER, Savannah. VICE-PRESIDENTS:

First-W. DESSAU,					Macon.
Second—Pope Barrow,					Athens.
Third—John L. Hopkins,					Atlanta.
Fourth—S. R. ATKINSON,					Brunswick.
Secretary—John W. Akin,					Cartersville
Treasurer—S. BARNETT, JR.,					Atlanta.

# ROLL OF MEMBERS.

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Adams, A. P.		٠		•			٠				•	Savannah.
	•							•		•		Savannah.
Akin, John W		*							•			Cartersville
Anderson, Clifford												Macon.
Anderson, C. L.												Atlanta.
Arnold, F. A.												Macon.
Arnold, Reuben						Ā						Atlanta.
Ashley, D. C.												Valdosta.
Atkins, James .												Savannah.
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# REPORT

OF THE

# EIGHTH ANNUAL MEETING

OF THE

# Georgia Bar Association

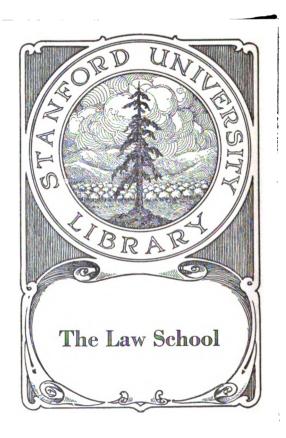
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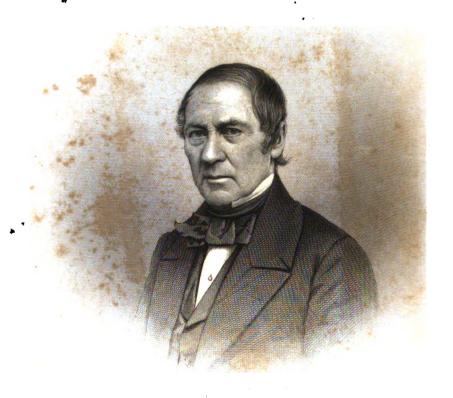
COLUMBUS, GEORGIA.

MAY 20TH AND 21ST, 1891.

Stenographically Reported by A. F. COOLEDGE.

ATLANTA, GA.; Jas. P. Harrison & Co., Printers. 1891.





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REPURT

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# GENERAL MINUTES.

# FIRST DAY'S PROCEEDINGS.

COLUMBUS, GA., May 20, 1891.

The Eighth Annual Session of the Georgia Bar Association met in the court-room of Muscogee Superior Court, Columbus, Ga., May 20, 1891, 10 A. M., Frank H. Miller, President, in the chair; John W. Akin, Secretary.

The President: The Association will come to order. The first thing, gentlemen, prescribed by the by-laws is the reading of the minutes. As they are in print, the chair suubmits to you the propriety of dispensing with that.

Mr. Charles C. Jones, Jr.: 1 move that that be dispensed with.

Carried.

The President: The next thing in order, gentlemen, is the President's address. (See Appendix No. 1.)

The President: The next thing in order, gentlemen, is the report of the Treasurer. I am informed that he is unavoidably detained by sickness. Mr. Secretary, have you the report?

The Secretary: Yes, sir. (See Appendix No. 2.)

The President: Gentlemen, you have heard the report of the Treasurer, which is approved by the Executive Committee. What action will you take upon it?

Mr. Alex. Jones: I move that the report be received and adopted.

Carried.

Mr. Hill: Mr. President, allow me to submit a motion in connection with the Treasurer's report. In view of his necessary absence, it is important that some substitute should be provided, because a large number of members of the Association wait until they attend the annual meeting to pay their dues. I move that Mr. H. R. Goetchius be elected Treasurer pro tem., and that he sit at the receipt of custom during the present meeting.

Carried.

The President: The next thing in order is the report of the Executive Committee.

Mr. Thomas J. Chappell, Chairman, submitted the report. (See Appendix No. 3.)

After reading the report, Mr. Chappell said: There is another that has been called to the attention of the Executive Committee, in regard to which they do not feel empowered to act, but they think it well to call the attention of the Association to it, and that is, the status of those members whose names have been dropped from the roll of membership. They are included along with those who have resigned. The Executive Committee did not feel authorized to decide whether they occupy the same position with relation to the Association as those who have resigned. By referring to that list it will be seen that some very good material has been dropped in that way, and it is possible we ought to amend our by-laws so as to enable them to get into the Association again. Frequently their failure to pay their dues has not been any fault on their part. Each year they have found their dues accumulate on them until after awhile they have got in such a position that they did not feel inclined to relieve themselves by payment.

The Executive Committee have no resolution to offer in that regard. They call the attention of the Association to it at this time in order that the members may consider the matter and during the present session endeavor to make

some provision in regard to it.

Mr. Mercer: Mr. President, I move that the report of the Executive Committee be adopted.

Carried.

The President: You have before you, gentlemen, the



reduced to writing, bringing before you a matter portance. The chair is of the impression that a tion was had in the past to the effect that they shall be discharged or regarded as discharged mem simply treated as having resigned. I believe to some action taken. Possibly our Secretary may to give us some information on the subject.

Mr. Chappell: That was the question that was su to the Association, and I will state that it came u that the committee did not have time or opport investigate the records of the Association on the nor to prepare any resolution, which otherwise the have done; but I present the suggestion that done now. My own view about it was that the upon the same footing as those that had resign consequently they were no longer members and: be permissible to re-elect them as members. I mov Mr. President, that members of the Association names have been dropped from the roll be all submit their names again to this body for election elected, that they be allowed to come in on the sa ing as new members. I will amplify the motion the be so notified by the Secretary, and that those ge: who may be present in that situation be allowed in now.

Mr. Levy: Mr. President, I offer to amend that to amend that they be allowed the privilege of recon the same footing as new members, with the exthat they pay up all arrears at the time they make application. I see no reason why members of this ciation shall ignore the payment of their dues are the balance of the Association sustain the expense ducting their affairs, and then at a convenient time their membership with this Association. I therefore the amendment.

Mr. Erwin: Mr. President, I think that the spirit amendment is in general correct, but the purpose recommendation of the committee (as I gather it freeport) is to accomplish another thing, that is, to the Bar Association with the support of as many most the bar as possible through the State. Now, that the purpose of both the original resolution a



it so that the members who are in arrears will be required, say, to pay one back year and omit the others; that if they are in arrears for over one year, that they pay up for the year preceding; that upon payment of the dues for one year that they be reinstated. I think that would accomplish both purposes. It would not offer a premium for members who have just fallen out through carelessness in support of the Association, and at the same time it would probably save to the Association the influence of a very large number, as I understand, of influential members of the bar throughout the State. Therefore I am opposed to the amendment in its present shape.

The President: You propose to limit the amendment to one year instead of all back dues, as I understand it?

Mr. Erwin: Yes, I offer that as a substitute.

Mr. Lumpkin: I second the substitute.

Mr. John Peabody: Mr. President, I would like to suggest an amendment to the substitute, and that is that all members whose names have been dropped for non-payment of dues shall be considered to have resigned, and may be re-elected as members.

Mr. Erwin: I accept that.

The President: There is a substitute before the house, as the chair understands it, to the effect that all names that have been dropped from the roll of membership shall be re-elected upon payment of the dues for one year.

Mr. Erwin: I do not mean that that one year means the present year.

The President: It means to go back one year exclusive of the present year.

Mr. Erwin: Yes.

The President put the substitute, which was carried. Then the original motion as amended by the substitute was adopted.

The President: Are there any names of members to be presented to the Convention, gentlemen? Are there any others to be submitted for action?

Mr. F. D. Peabody: I think there are some names to be presented.

Mr. Chappell: As I understand it the names reported by the Executive Committee are all. They become members by virtue of that report.

The President: The next thing in order is a paper by Edward W. Martin, Esq., "The Perfection of Right, which is Justice, the Ideal Law."

Mr. Martin then read his paper. (See Appendix No. 4.)

The President: The next in order is the report of the Committee of Judicial Administration and Remedial Procedure, Walter B. Hill, Chairman. (See Appendix No. 5.)

The President stated that the motion would first be put upon the report in reference to the exchange of briefs in the Supreme Court.

Mr. Akin: I move that the report be received.

Mr. Erwin: Does that mean the adoption of the report?

The President: No sir, it does not.

The motion was then put and carried as to the entire report.

The President: We will proceed to the next matter, a paper by H. A. Mathews, Esq., "The Property Rights of Married Women; is any Additional Legislation Needed?"

Mr. John Peabody: Mr. President, in reference to the adoption of the report of Mr. Hill a moment ago I would like to inquire what would be the condition of the report if we take no further action?

The President: It will be received as information.

Mr. Mathews then read his paper. (See Appendix No. 6.)

The President: The next thing in order, gentlemen, is the report of the Committee on Ethics, J. N. Neel, Esq., Chairman.

Mr. Goetchius: Mr. Chairman, I do not know whether the Committee on Ethics proposes to submit a report or not. There does not seem to be any response to that order

of business, and I desire to call the attention of the Association to a Code of Ethics that has been passed or adopted by the Bar Association of Alabama. It was printed in pamphlet form. It does not consist of more than eight or ten pages of printed matter, and I desire to give notice that I want to call the attention of the Association to that pamphlet later on. I have not a copy with me, not thinking that this would be reached this morning, and left it at my office. I was going to suggest that our Association adopt it with such amendments as they see proper, and have it distributed throughout the State, not only to the members of this Association, but to every Attorney in the State of Georgia, and I beg leave at some future time to return to this order of business for the purpose of submitting that pamphlet for the consideration of this Association which I would do now if I had a copy with me.

The President: There is no report of the Committee on Ethics ready. The next thing in order is the report of the Committee on Federal Legislation, W. G. Charlton, Esq., Chairman.

The Secretary: Mr. President, I believe no member of that committee is present. Mr. Charlton addressed a letter to Mr. Chappell, the Chairman of the Executive Committee, who hands it to me, in which he expresses his regret that it is impossible for him to attend, and encloses the report of the committee. Shall I read it, sir?

The President: Yes.

The Secretary then read the report. (See Appendix No. 7.)

The report was received.

Mr. F. D. Peabody: Mr. President, before proceeding to another head of business, it possibly may be proper to move a reference of the paper of Mr. Mathews to the Committee on Judicial Administration and Remedial Procedure to take action. I make that motion.

Mr. John Peabody: Mr. President, I would like to make an amendment, and that is, I would like to call that committee's special attention to this anomaly; that under the law, under the statute as we now have it, no wife can sell her property to her husband for even a farthing's con-

sideration. It is absolutely void unless approved by the Judge of the Superior Court; and yet she can give him that property without one farthing's consideration.

Mr. F. D. Peabody: That is included in the report. I think the committee will take cognizance of that.

Mr. Peabody's motion was then put and carried.

The President: Gentlemen, I hold in my hand a letter from the Honorable William M. Reese, in which he says on account of his business there will be no report from the Committee on Grievances. Gentlemen, we have now reached the close of the order of exercises on the programme for to-day. Is it your pleasure that we shall take up other matters, or that we shall adjourn?

Mr. Garrard: I would like to inquire at what time we will take action on the suggestion as to briefs in the Superior Court?

The President: The report has simply been received. Under the head of General Business it will come up to-morrow.

Mr. John Peabody: Mr. President, I asked my friend, the Chief Justice, a question just now that I would like to ask of this body, whether it would be proper for this Association to discuss and deliver themselves upon the question as to the constitutionality or propriety of the General Assembly appropriating a part of the receipts of the Western & Atlantic Railroad towards the Columbian Exposition. I suppose that matter will be brought before the next General Assembly, and I would like to know whether it would be wise and prudent for this assembly of lawyers to discuss it, and the answer of the Chief Justice was that it would be perfectly right provided we knew beforehand exactly the conclusion that this body would come to. I desire to bring the matter before the Association to consider whether to-morrow we take up that matter and discuss it. I do not know whether the General Assembly need our advice or not.

Mr. Wimbish: Mr. President, I am requested to announce that the members of this Association will be met by the local bar at the Rankin House at four o'clock this afternoon and accompanied to the wharf where the

steamer Pactolus will be in waiting. It is the desire of the local bar to tender to the Association an excursion down the river

The President: The chair tenders the thanks of the Association

Mr. Wimbish: It is suggested that, in the event any members should fail to get to the Rankin House before the Association has left, they proceed at once to the wharf, as we will hold the boat a few minutes.

The President: The Association will now take a recess till to-morrow morning at 9 o'clock.

## THURSDAY MORNING, MAY 21st, 1891.

The President: The Association will come to order.

Mr. F. D. Peabody: Mr. President, in view of the fact that the Association does not seem to have all gathered, I will move a change of the programme, and that No. 8 on the programme be substituted for No. 1, and that a committee be now appointed to select officers for the ensuing year, and a place for the next meeting.

Carried.

The President: Of how many shall that committee consist?

Mr. F. D. Peabody: I will suggest five. I think it was five at the last meeting.

The President: The committee will consist of G. A. Mercer, of Savannah; F. D. Peabody, of Columbus; G. D. Thomas, of Athens; B. P. Hollis, of Americus, and Marion Erwin, of Macon. The chair will suggest that the committee immediately retire, and that the Association take a recess until they are ready to report.

Mr. Mercer: I am very happy to serve on the committee, but I have to present the report of a committee of which I am Chairman, and if it should come in order will you send for me?



The President: Yes, just make the next man on your committee Chairman.

Mr. Goetchius: Mr. President, before the Convention goes into recess. I desire to call their attention to No. 9 on vesterday's order of business, the report of the Committee on Ethics. I stated at that time that I would ask the Convention to recur to that report for the purpose of making a motion, suggesting the distribution of a Code of Ethics somewhat on the order of the Alabama Bar Association. I have learned since that time (and recall it now myself). that the Convention, some three or four years ago, adopted the report of a committee, and established it as the Code of Ethics for the Georgia Bar Association which doubtless is the one from which the very report that I speak of the Alabama Association was formed. At least I am satisfied that the report of the committee, as embodied in the report of a preceding publication, some two or three years ago, is all that we need. But the point that I am coming to is this, that I think that one of the objects of this Association will be very highly promoted by a dissemination at this time of that Code, not only to the members of the Association, but to all the lawyers in the State of Georgia. As we all know, one of the prime objects of this Association is to elevate the tone of the bar; and if the lawyers throughout the State will live up to the Code as reported by that committee, and already adopted as a part of our organization, why its tendency will certainly be to elevate the tone of the bar, and I know of no better way to accomplish that result than to bring this Code to the knowledge of all the practicing lawyers throughout the State, whether they be members of the Association or not. I therefore move, if the Association agree with me on this point, that the Secretary be instructed to reprint that Code in pamphlet form, and that he send it to the address of every lawyer in the State.

The President: In advance of the journal or with the journal?

Mr. Goetchius: The journal only goes to the members of the Association, and outside members are not entitled to it, and my idea is, unless some one suggests a better thought, that this is independent of the distribution of the journal entirely. The publication need not be in ad-

vance of the journal, but at any rate that the Secretary be instructed to have this published, and at the earliest time possible send it to the members of the bar throughout the State.

Mr. Lumpkin: Has that been adopted as a Code of Ethics of this Association?

Mr. Goetchius: Yes, sir. My information in response to the question of Judge Lumpkin is that the Convention adopted the report of that committee some three or four years ago as a Code of Ethics for the Bar Association of this State, and it has been embodied in one of our journals some time ago.

I am further aware of the fact that the distribution of this Code at one time was made to the members of the bar, but it has been several years ago; but I believe in the old scriptural injunction of line upon line and pre-

cept upon precept. I make that motion no.

Mr. Lumpkin: I second the motion.

The President: The motion, as the chair understands it, is that this Association adopt a report made by the Alabama Association—

Mr. Goetchius: No, sir; I beg pardon. I spoke of the Alabama Code of Ethics, but this Association has already some three or four years ago, adopted a Code of Eethics embodied in our journal, and my motion is that that be republished in pamphlet form by the Secretary and be distributed to all lawyers throughout the State.

Carried.

Mr. F. D. Peabody: Mr. President, I find that Mr. Thomas, who was appointed on the committee a few minutes ago, is absent, and I would ask to have another committeeman appointed.

The President: Mr. Secretary, just substitute the name of Judge Boynton in place of that of George D. Thomas on the committee.

The Secretary: Mr. President, Mr. Walter Hill had toleave the city this morning, and left with me two resolutions which he requested me to present to the body. The first is as follows: to examine the modes adopted by other States for the publication of their public laws, and to report at the next meeting of the Association whether future compilations of the Code should not be published by the State so that the same might be furnished to the public at the actual cost of publication in the same manner as the Georgia Reports.

Adopted.

The President: Did Mr. Hill suggest the number of the committee, Mr. Secretary?

The Secretary: Yes; five.

The President: The chair will appoint the committee at his leisure and notify the Secretary.

The Secretary: The other is as follows:

Whereas, Upon recommendation in the message of Governor David B. Hill, the General Assembly of New York has authorized the Governor of that State to appoint a commission to investigate certain subjects upon which uniformity in the laws of the several States would be desirable, and requesting the Governors of other States to appoint similar commissions to confer with the commission thus created; and whereas the Governor of New York has appointed such a commission;

Resolved, That this Association hereby suggests to the members of this body who are also members of the General Assembly of Georgia the propriety of taking into consideration legislative action in this State authorizing the Governor to appoint a commission to confer with that of the State of New York and of other States in which similar commissions may be appoint a commission of the State of New York and of other States in which similar commissions may be appoint a commission.

pointed.

This motion was also adopted.

The President: Gentlemen, the assembly will now take a recess for twenty minutes and await the report of the committee to whom was referred the matter of selecting officers and a site for the meeting next year before we proceed with the regular order of the day. (Twenty minutes recess.)

The President: The Association will come to order.

Mr. Mercer: Mr. President, is the Association ready to hear the report of the committee?

The President: Yes.

Mr. Mercer: The special committee directs me as its Chairman to report as follows: They suggest:

President, John Peabody				Columbus.
1st Vice-President, A. O. Bacon				Macon.
2d	"	"	John I. Hall	
3d	66	"	Allen Fort	Americus.
4th	"	44	John W. Park	Greenevide.
5th	44	"	William H. Fleming	Augusta.
5th " William H. Fleming Secretary, John W. Akin				
Treasurer, Z. D. Harrison Atlan				

#### Executive Committee.

Walter B. Hill, Macon.

Marion Erwin, Macon.

Washington Dessau, Macon.

H. A. Mathews, Fort Valley.
E. W. Martin, Atlanta.

Dessau, Macon.

The committee, sir, have suggested Macon as the place for the next meeting.

Mr. Mercer: I wish to say, Mr. President, that Mr. Akin asked the committee not to nominate him again for the Secretary; but we felt that he had filled this office so well, that the Association could not dispense with his services. On the principle of noblesse oblige, we nominate him again.

On motion the report of the committee was adopted.

The President: The next in order, gentlemen, according to the programme of to-day is the report of the Committee on Memorials, Col. Charles C. Jones, Jr., Chairman. (See Appendix No. 8.)

The President: The next in order, gentlemen, is a paper by Col. James M. Mobley, "Law Reform and Charges." (See Appendix No. 10.)

The President: The chair announces the Committee on Publication of Statutes and Code, provided for in the resolution of Mr. Hill passed this morning, as follows: W. B. Hill, Chairman; Clifford Anderson, Howard Van Epps, Charles C. Jones, Jr., T. J. Chappell.

The next thing in the order of the day is the report of the Committee on Jurisprudence and Law Reform, Col. George A. Mercer, Chairman.

Mr. Mercer then submitted an oral report. (See Appendix No. 11.)

At this point Mr. Chappell took the chair.

Mr. Miller: Mr. President, I desire simply to communicate to the Association the following fact: On the 3d of

committee as follows:

Pursuant to the action of the Georgia Bar Association page 23, under which I was requested to prepare a bill or b the suggestions set forth in the paper read by me, Journal p hand it to the Committee on Jurisprudence and Law Reform, pared and now enclose you herein a bill on the subject :

I do not deem it advisable to go further, as my experience come slowly, and since the passage of the Resolution Congresill, July 2d, 1890, to protect trade and commerce against unlar and monopolies, and the decision of our Supreme Court, Redwine, 11 S. E. Reporter, 662, has been published.

Kindly look over this bill and do not hesitate to criticize, Et

All I desire is the welfare of the State and of the profession.

The Supreme Court of the United States, in Chicago 1 i
Company vs. Needles, 113 U.S. 574, discuss this subject, a l
drafting the bill, kept this prominently before me as well as 1
York, as far as I thought applicable.

If you desire it I will have copies of the bill forwarded to t bers of the committee, but I would prefer first to have your

ing the same.

On the 9th of March I received a reply from ( and on the same day I wrote the following to ber of the committee:

I write to you as a member of the Committee on Juris Law Reform of the Georgia Bar Association for the year 189 you herein a face impression of the bill prepared and sent to the Chairman of the committee. I also send you copy of co had with him to date accepting his suggestion, which you will in pencil in the copy sent you.

If you have any suggestions to make, kindly transmit

Mercer as Chairman of the committee.

Now, Mr. President, in view of the facts w been known to the Association, I would be unauthor of the bill, to have it come up at this action. I do not hesitate to say that I gave it a of time and careful consideration. would move that it be printed in the journal, come up for action on the first day of the na after the President's address. In that way we it in print and have an opportunity to read it and understand it. We would not be able to do with one reading to-day to see what would be the existing laws. That is the course that I think for us to pursue at that time with reference to It is a very important subject; I think it require and due consideration. It is suggested that



motion shall apply to all the other suggestions from the committee and the bills which they have prepared, so that the matter may all be in print. I make the motion to include them all as I understand them to come from the other members of the committee to the entire matter, werbal and written, as submitted by the Chairman of the committee.

Mr. F. D. Peabody: I wish to exclude from that motion the reference to the execution of deeds outside of the State of Georgia. It is proposed by some gentleman that we take action on that now.

The President pro tem.: I will put the question on his motion as originally made. It is that upon the bill offered by Mr. Miller himself, and which has been read by the Chairman of the committee, no action be taken during the present session of the Association, but that it be referred to the next meeting and be made the special order of the first day of the next meeting of the Association.

Carried.

The President pro tem.: The chair will submit any further motion in reference to the report.

Mr. F. D. Peabody: Mr. Chairman, the idea was suggested that all of these suggestions made by the Chairman of this committee take this same direction, but it appears to me, and some of the other gentlemen sitting near me that there can be certainly no objection to the most excellent amendment suggested by this committee to the section of the Code providing for the execution of deeds outside of the State. I therefore move that the bill, as prepared by the Chairman of that committee, be offered as a substitute for the bill proposed by the Chairman of that committee of last year, and that this Association do recommend that that bill, as prepared be passed by the next Legislature. The Secretary is to furnish a copy to some gentlemen of the Legislature for the purpose of introducing it.

The President pro tem.: Gentlemen, it is moved that the bill proposed by the Committee on Jurisprudence and Law Reform, proposing an amendment to the law with reference to the attestation of conveyances be accepted by this body in lieu, or as a substitute proposed at the last

meeting of the Association, and that this Association recommend the substitute proposed by the committee which has been read.

Carried.

Mr. Gilbert: The Chairman of the Judiciary Committee of the present House is in the body, and I move that this Association request him to introduce the bill—the Honorable Warner Hill of Greeneville.

Carried.

Mr. F. D. Peabody: Before the regular President (Mr. Miller) takes his seat I have a motion that concerns him. I move that the recommendation of the President's address on yesterday in reference to the teaching of elementary principles be referred to the Committee on Jurisprudence and Law Reform, with request to report at the next meeting.

Carried.

President Miller here resumes the chair.

Mr. Erwin: Mr. President, I think, if I am correct in my recollection, that in the motions put unintentionally, that the bill offered by Mr. Mercer in reference to amendments has been lost sight of, and no disposition has been made of it. The motion was put on the bill drafted by yourself, and then afterwards the bill drafted by Mr. Mercer was lost sight of. I think we should take some action upon that, as that is very important. I propose then that that take the same direction as the bill drafted by yourself to be considered at the next meeting, and be printed in the journal for consideration.

The President: I understood that that was the action with reference to the bill, that it went over.

A voice: No, sir; it was changed.

Mr. Erwin: I make a separate motion with reference to that bill. I move that that be printed in the journal as recommended in the case of the bill offered by yourself, and that it be taken up on the first day of the next annual meeting immediately after the other bill. I refer to the bill in reference to the amendment of pleadings.

Carried.

Mr. Garrard: Mr. President, I dislike at this time to take up the time of the Association, but the matters contained in the bill written by yourself in regard to proceedings against corporations are of such important character, that I think that any suggestion that might be made in connection therewith, to be considered by the members of this Association, would be proper at this time. I think that a bill such as your Honor has written would perhaps appear at first blush to be such a radical reform that it would be very hard to get a Georgia Legislature to take hold of it, but I think the idea of the bill can be reached in another and a very simple way. I make this suggestion: section 1485 of the Code, which states for what a bank charter may be forfeited, reads as follows:

Bank charters are subject to forfeiture for the same general grounds as those of other corporations, and also,

- 1. For the violation of any of the provisions of their charters.
- 2. For the violation of any obligation imposed by law, unless contrary to the contracts of their charters.
  - 3. Whenever it is demanded by special enactment.

Now the general principles applicable to corporations are the grounds as exist at common law, that is for a misuser of their franchises, and also for non-user of their franchises.

If these five grounds which now apply to a bank were made to apply to all corporations, you would then have the machinery all in the Code, and it would not be considered an innovation; but no corporation could stand and say it was a hardship to be placed on the same footing that a bank was placed on. Now, section 1486 is as follows:

When the Governor is informed that a bank incurs the penalty of a forfeiture, he shall cause the Attorney-General to institute proceedings therefor in the county where the bank or parent bank is located, and in his discretion may employ assistant counsel to aid therein, and pay him out of any money not otherwise appropriated.

Now, I suppose the words, "a bank," are stricken out of that section, and you make it read as follows:

When the Governor is informed that a corporation incurs the penalty of a forfeiture he shall cause the Attorney-General, etc.

Now, I suggest for consideration (and it is perhaps an immature thought), that if this section is considered and the proposition was made to the Legislature to make this section, 1486, apply to all corporations, that we would

be very apt to be adopted, and then we would have something that we could amend in the future as it was needed. I believe that that would be all that is needed. I believe that if the remedy of forfeiture was provided and held up before the corporations of the State, there would never be an occasion to forfeit them. I believe that every corporation could be reached under these five principles laid down in the Code.

Now, the great trouble that has always been in the way, is that there have been no proceedings under the Code providing for the forfeiture of the charter of a corporation. I may be mistaken in my view of it, but the writ of quowarranto, I believe, itself, is limited by the Code, and you would have to go to the common law for a proceeding in the nature of a quo warranto to forfeit it. But under this section of the Code it would not be necessary to have a special act of the Legislature. I simply submit these views, and request that these sections, 1485, 1486, and section 1685 of the Code be considered in connection with the bill that you have drawn.

The President: That is entirely acceptable to the chair, if you make that motion.

Mr. Garrard: I make that motion.

Carried.

The President: The next thing in the order of the day is Judicial Salaries, by Washington Dessau, Esq.

Mr. Chappell: I have a letter from Mr. Dessau, received yesterday, in which he said he was unavoidably detained. He expected to attend up to a late hour, but his business is such that he is unable to respond.

The President: The next in order is the report of the Committee on Legal Education and Admission to the Bar, Joel A. Billups, Chairman. I am informed by the Secretary that there is no report prepared by that committee. The next is the report of the Committee on Interstate Law, Judge M. M. Blandford, Chairman. I am informed by the Secretary that there is no report filed by that committee. The seventh item is the report of the Committee on Grievances, Judge William M. Reese, Chairman. The chair understands that Judge Reese is



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general business.

Mr. Akin: I move the adoption of the following:

Resolved, That Chief Justice Bleckley and the Associate Justices, Simmons and Lumpkin, be, and they are, hereby appointed delegates from this Association to the next annual meeting of the American Bar Association.

It would be indelicate in the presence of these gentlemen for me to say more than that this appointment is a compliment merited by the consideration which these judges have shown to this Association in adjourning, during its session, our highest judicial tribunal, and in giving to this Association the pleasure of their presence.

The President: The chair will take the liberty in himself of seconding the motion, but you should add that notification of that fact be immediately transmitted to the Secretary of the American Bar Association.

Mr. Akin: I accept that amendment.

Mr. F. D. Peabody: I would offer this amendment, that, in the event these gentlemen cannot attend, to signify that fact to the President, and that he have the power to appoint some one who can attend.

The President: He has that power already.

The motion of Mr. Akin was then put and carried.

Mr. Erwin: I desire to offer a resolution that Judge Porter Ingram and Beverly A. Thornton be invited to be present at the banquet this evening, as guests of the Association. They are old veterans of the bar, and they have not joined the Association, as I understand, on account of age, not being able to travel around over the State.

Mr. Erwin: I desire to amend my own motion by adding the names of Judge Willis and Judge Martin.

Mr. Erwin's motion, as amended by himself, was then carried.

Mr. C. C. Jones: Mr. President, in behalf of the visiting members of this Association I desire, if they will sanction my suggestion, to return our sincere thanks to



the Columbus bar for the unusual courtesy and kindness extended to us, and to express for them our heartiest wishes for their every happiness and success.

Carried.

Mr. John Peabody: Will the chair allow me to suggest the hope that hereafter that remark cannot exactly be made; that is to say, that it is not unusual. I hope that when we go to Macon and other places we will not be under the necessity of making the remark there that the courtesies we there receive are unusual. I would like very much for gentlemen to feel that this is the usual manner in which the Georgia Bar Association should be treated.

- Mr. C. C. Jones: I did not mean that it was unusual for Columbus, but I mean that the courtesy has been so marked and so genuine and so hospitable that it calls for our earnest, hearty thanks. It is characteristic of Columbus and its bar, and I would not cast that reflection upon it or any other bar of Georgia.
- Mr. F. D. Peabody: The Committee on Entertainment wishes gentlemen to understand that the dummy on which they are requested and invited to take a trip around the city and see the suburbs will be at the Rankin House at 4:45 p. m. They will please congregate there. And further, sir, that the annual banquet at the Rankin House will begin promptly at 9 o'clock to-night.

Mr. Levy: Is there not some business that went over on the head of general business yesterday to be taken up today?

The President: No, sir. There were some notices given, but not acted upon. There was some notice given that some action might be taken in reference to the World's Fair at Chicago.

Mr. Levy: An important matter was suggested in regard to the filing of briefs in the Supreme Court.

The President: That was disposed of for this meeting on yesterday with Mr. Hill's report.

Mr. F. D. Peabody: Mr. Hill gave me last night a report. He just wrote them out in formal shape, and I will

hand them to the Secretary. He made no request for me to move any further action. These are reports made and signed by a majority of the committee.

Mr. John Peabody: I would suggest that if it would be no discourtesy to that committee or the Chairman of it, that this Association should take no action upon it. It is very much like suggesting to the Supreme Court what they ought to do in their own court. The members of that court have heard the suggestions and listened to them, and they can act from their own sense of propriety. They can themselves pass such an order without any request from us, and I think, therefore, that the proper course for us to pursue is to say nothing more about it.

Mr. Garrard: I am inclined to think that we ought not to leave the Supreme Court under such an impression that we desire them to adopt such a rule. I think, without entering into a discussion of it, it would be a rule that would work a great deal of hardship on all the bar except those that reside in Atlanta. Most of the members of the bar, after they go to the State Library there, add to their briefs. I take it for granted that the lawyer on the opposite side will find out all the law pro and con, and know how to manage his case, without having to examine the brief of the other counsel. The Supreme Court would never refuse to allow him to submit other authorities if they were in doubt about it; and I would be very much opposed to requesting the Supreme Court to make such a rule even if I thought it was proper. I think the Supreme Court are competent to manage their own business.

The President: In the absence of the Chairman, we might set that down for action at the next meeting of the Association.

Mr. Levy: That can go over for consideration at the next session?

The President: Yes; it will so appear in the journal.

Mr. Erwin: There was one recommendation made by Mr. Hill on yesterday that I think was passed over until to-day, and that was the recommendation in regard to the compilation of the criminal laws of the United States. I think, Mr. President, that that recommendation—as Mr. Hill has since changed the language of it, he told me—I

spoke to him on yesterday afternoon in regard to the manner in which he had framed his resolution suggesting a codification of the criminal laws of the United States; it ought to be a codification of the criminal procedure in the Federal courts. He stated that he would make a change in the wording of it. Taking it in that way, I think it is an important resolution. It is an important matter, and one which ought to be carried through; and I think if such a measure be proposed, that it would be well that it came from Georgia, and the Congressmen from other States might have their attention called to it through the American Bar Association. If I am in order I will state some of the points in reference to it.

The President: You are in order, sir.

Mr. Erwin: The law, as it stands in reference to that. I do not think is exactly in the chaotic state that Mr. Hill stated on yesterday. The Supreme Court, in the case of the United States vs. Reed, in the 12th Howard, laid down the doctrine which has since been followed in all the subsequent decisions of the Supreme Court of the United States in regard to criminal procedure in the Federal The Supreme Court there held (if I can recall the exact language) that no law in a State passed since 1789 can affect the mode of procedure, or the rules of evidence in criminal cases in the Federal courts: but that in regard to criminal procedure the Federal courts take the common law as the same matter of course as in the States at the adoption of the Constitution of 1789. We have no criminal law of the Federal courts. That is to say, nothing is a crime in the Federal law because it was a crime at the common law; only such things are crimes as are made specially so by special enactment of Congress. But where Congress has made a certain thing a crime and provided a punishment, the Federal courts look entirely to the common law for the machinery by which that punishment shall be determined, the method of trial and manner of procedure throughout. Now, there is no question to a lawyer in the Federal courts as to whether or not the State rule of practice will apply, or whether the common law. In that one particular Mr. Hill, I think, is mistaken as to there existing any trouble or confusion. But still while that is true, the fact still remains that a lawyer is sometime put to a great deal of trouble, and sometimes it is difficult, to ascertain just what the common law rule was.

all of us have come to the conclusion that Mr. Field's views are correct in regard to the codification of statute laws, and that the codification of the laws of Georgia was a great reformation, both because the common law ought to be codified so as to make it of ready reference, and also because we know that if they undertake to codify the common law as to procedure, that they will undoubtedly introduce great improvements in it, and do away with many of the technical formalities which frequently throw a pleader out of court, where now such mistakes amount to nothing under the ordinary forms. I think it is important that the criminal procedure of the Federal courts should be codified. Therefore I move that the resolution as offered by Mr. Hill, or the recommendation be made by this body, that it is the sense of this body that Congress should frame a Code of criminal procedure in the Federal courts. Now, this suggestion has been made, and one or two moves have been made in that direction: that is to say, it has been suggested that we pass an act of Congress in regard to criminal procedure in the Federal courts exactly like the one passed in regard to common law procedure on the civil side of the court; namely, that we adopt the laws of the State as to criminal procedure exactly as they are done in the case of common law suits. But there are a great many objections to that. One of the main objections is that in regard to the different methods of procedure in the different States. Now, the Supreme Court has held in a number of cases that the first ten amendments of the Constitution of the United States are restrictions of the Federal power, the Federal courts, and not on the States. They held in 110th United States that the Act of California doing away with grand juries and substituting the finding of a magistrate and the simple filing of the prosecuting officer charging the offence, was a reform that was not in violation of any law of the United States, and was due process of law. If a law was passed adopting the State methods of procedure, the result would be that we would have some of the States of the United States, as for instance California, doing away with the grand juries, which would be in conflict with one of the amendments of the Constitution, in which it provides that the right of trial by jury shall not be abridged. There are practical difficulties in this, that the main bearing of the Federal laws is on the relation of citizens of different



States to each other, interchange of commerce, etc., and where a crime, as for instance a crime against the interstate commerce law, is enacted, it will usually affect persons traveling from one State to another, where, for instance, a man is employed in the postal service as route agent on a road, he goes from Georgia into Alabama, and while he studies the Federal laws in reference to his duty, and method of his punishment in one State, which frequently partakes of the essence of the punishment, he ought to be informed, so that a man, in passing from one State to another, should always have one punishment fixed, one method of enforcing it. Therefore, I take it to be pretty well established, not only as a settled policy of the government, since there has been no such rule adopted up to the present time, as well as because of the reason of the law that no enactment will be made similar to the one adopted in regard to the common law procedure adopting the laws of the State in regard to criminal procedure in the Federal courts.

The next reform, therefore, is the codification of the rule of procedure in the Federal Court, and the criminal procedure, and also the introduction of such improvements as will be uniform throughout the country, and as will be consistent with our present age and advanced civilization. I therefore move that that be adopted as the sense of this Bar Association, and that a copy of that resolution be sent to our Congressmen.

Mr. Levy: I would like to offer an amendment to that; that is, that that resolution that he has offered now to be passed, and the committee from this Bar Association having been elected to attend the American Bar Association, that that committee be requested to bring that matter to the attention of that Association and press its passage in that Association.

Mr. Erwin: I accept the amendment.

Mr. Garrard: I ask that you divide the question. First put the resolution without the instruction.

The President then put the resolution without the instructions, which was carried.

Mr. Garrard: Now, I oppose the other because we have sent the Supreme Court as delegates, and it does not strike



me exactly right to instruct them. I do not like the idea. Let them go, and if they have imbibed any ideas here they can press them.

Mr. Levy: I do not withdraw my resolution. I think it is the sentiment of this Association, and the sentiment of this Bar Association is, that it is a matter of grave importance, and the best way to do that is simply to invite the attention of those gentlemen who are delegates to the American Bar Association, and request them to direct the attention of the American Bar Association to its enactment.

Mr. Garrard: These gentlemen are representatives of the State judiciary, and are not supposed to be interfering in that other question involving the Federal judiciary. I think our request to Congress would be sufficient.

The President: By the rules of the American Bar Association you have a general counsel and certain local counsel in each State. If you will simply put your resolution so that it should be brought to the Bar Association by the general counsel of that body in the State of Georgia, and the local counsel, I think, with the aid of the Supreme Court, we can be relieved from the difficulty and accomplish both results. Mr. Mercer is general counsel of this State and myself one of the local counsel.

Mr. Levy: I move that it be given that direction. Carried.

The Secretary: There is a matter which it is proper that I should state to the Association in order that it may go down in the record. In the fifth annual report Mr. Alexander R. Jones' name is placed in the list of those whose names are to be stricken from the roll for non-payment of dues. That was a mistake. The Treasurer should not have included Mr. Jones' name in that list, as the present Treasurer informs me that Mr. Jones was not in default and should not have been stricken from the roll. Judge N. L. Hutchins' name has been lost from the roll for some reason, perhaps the same way. The present Treasurer informs me that Judge Hutchins is not in arrears and his name should not have been stricken. think this correction should be given the same publicity as the erasure of their names. In contemplation of law their names are simply not printed, but are still on



public correction was that it might appear in the minutes that injustice had been done these gentlemen by the omissions referred to.

Mr. C.C. Jones: There is one matter I should have mentioned as Chairman of the Committee on Memorials. It is this, that the by-laws require that your committee, where a memorial is submitted in regard to some prominent, distinguished lawyer, should also inquire whether or not there was in existence and could be procured an engraved portrait which might accompany the proceedings of this Association. I desire to say there does exist a very excellent engraved portrait of Mr. Berrien. It is in the hands of Mr. J. C. Buttre, of New York. It can be obtained at very reasonable cost, or impressions from it can be had at very reasonable cost for purposes of the journal.

The President: The Attention of the Association was called to the fact that certain matters were left to the discretion of the last Executive Committee and were not acted upon because they did not deem it advisable to do so in the state of the treasury. I think the suggestion is very well that we should leave it to the discretion of the Executive Committee as to the expense to be incurred.

Mr. Chappell: A word as to the action of the Executive Committee before in regard to this same question. At that time, by amendment to the original resolution as to steel engravings of the subject of the sketch, it was requested to prepare steel engravings of two other gentlemen whose names were mentioned. We did not think the condition of the treasury at that time would authorize it, especially as we anticipated that the treasury might be drawn upon by the Committee on Grievances. That involved the procurement of a plate and the printing of it.

Mr. C. C. Jones: That is just the point to which I desire to call the attention of the Association. Impressions from this plate can be had, I am quite sure, at a very nominal cost, of not more than three to five cents. I do not know what the issue of the journal of this Association is, whether 300 or 500 copies, but you will see that that would be a mere bagatelle—\$15 or \$20 would cover the whole outlay.



The chair put the question of getting impressions of the engraved portrait of Judge Berrien, which was carried.

The President: Gentlemen, we have now reached the end of the second day's session, and it becomes my duty to say that it has ended greatly to my satisfaction and pleasure. I shall remember it as one of the greatest incidents of my life to have had the pleasure of presiding over such a body of men. I only regret personally that the distance is so far from you that we have to cross the entire State to see the people; yet we feel as neighbors and friends. I therefore, because it is my duty to do so, say good-bye.

Adjourned.

# APPENDIX No. 1.

### PRESIDENT'S ADDRESS.

By HON. FRANK H. MILLER, OF AUGUSTA, GA.

DELIVERED BEFORE THE GEORGIA BAR ASSOCIATION AT ITS EIGHTH ANNUAL MEETING, COLUMBUS, GA., MAY 20 AND 21, 1891.

Gentlemen of the Georgia Bar Association:

In compliance with the first by-law, and keeping in view the objects of the Association, I hereby open the eighth annual meeting. I have chosen as my subject "the mission" of those whom I consider the representatives of public sentiment, the motors of progress in the administration of justice, and who alone can make it a practical thing for posterity to deal with.

#### THE YOUNG PRACTITIONERS AT THE GEORGIA BAR.

In dealing with the subject, I may depart somewhat therefrom, so as to include matters that may fall within the province of your President to make known to them.

A celebrated humorist has said, that man's life is divided into three periods. The first is spent in throwing "stuns" at a mark. The second in gathering up the "stuns" and looking to see where they have hit. The third "in groaning over his misfortins and nussin the rheumatiz."

The professional life of the attorney is certainly divided into three periods. The first is a struggle for position. The second in reaping the results in reputation and practice. The third in sustaining himself in what he has acquired against the vigor, energy and perseverance of his younger brethren.

With the first period mainly do I now propose to deal, hoping to aid our younger brethren "How to begin, how to accomplish best." 1. The first important act of an attorney is the taking of his oath of office.

In England a license granted by a court to an attorney to practice law is not a contract between him and the State which the Legislature cannot interfere with. It may be revoked or additional conditions may be placed upon its exercise, or the exercise of its profession may be taxed and a penalty enforced upon it exercise without such payment.

In the United States an attorney is not a civil, governmental or public officer; he is not the holder of an office of public trust within the meaning of the constitution. He is simply an officer of the court. Ex parte Garland, 4 Wall, 333.

Our own Chief Justice says, "He is a part of the system of remedy; no part of the system of substantial rights."

Blackstone says. "No man can practice as an attorney, but such as is admitted and sworn."

So early as the Statute Henry IV., 4 chap., 18, it was enacted that attorneys should be examined by the judges, and none admitted but those that were virtuous, learned and sworn to do their duty. And many subsequent statutes have laid them under further regulations.

In the second year of the reign of King George II., A. D. 1729, an Act of Parliament was passed, "for the better regulation of attorneys and solicitors," in the 13th and 14th sections of which this oath is prescribed, "That I will truly and honestly demean myself in the practice of an attorney (or a solicitor) according to the best of my knowledge and ability."

The powers of the courts of equity and of law were vested by the Act of 1799 in the Superior Courts of Georgia, and the same persons have acted both as attorneys and solicitors in those courts. The judges in convention amalgamated the oaths and in establishing the rules of court, prescribed the present form, which, at the adoption of the code, January 1st, 1863, become statutory. This requires them, Sec. 397, to swear that they "will justly and uprightly demean themselves according to the laws as attorneys, counsellors and solicitors, and that they will support and defend the constitution of the United States and the constitution of the State of Georgia."

Attention is directed to this oath because of certain recent Federal legislation and judicial decisions.

Article V., paragraph 5, of the Constitution of November 7th, 1865, says:

"The laws of general operation now of force in this State are, 1st, as the supreme law the Constitution of the United States, the laws of the United States in pursuance thereof."

By Act of Congress of June 25th, 1868, Georgia was admitted to representation in Congress when the Legislature shall have ratified the fourteenth amendment of the Constitution of the United States and assents to the fundamental condition therein imposed.

On the 21st day of July, 1868, Major-General Meade notified General Grant that both houses of the General Assembly had complied with the requisitions of the Act of Congress of June 25th, 1868.

On the same day the Reconstruction Constitution of Georgia took effect, 39 Ga. 39, article XI., paragraph 1, of which is in the same language as the Constitution of 1865, and after proclamation of President Johnson of July 27th, 1868, the State was turned over to the civil authorities to act under this Constitution.

Subsequently, by Act of Congress of June 15th, 1870, it was enacted, that the State of Georgia had in good faith complied with the Reconstruction Act and the fourteenth and fifteenth amendments to the Constitution, and was entitled to representation in Congress.

Thereafter the Constitution of Georgia of December 21st, 1877, was adopted, article XII., paragraph 1, Code, §5230, being in the same words as the Constitutions of 1865 and 1868.

The question, therefore, which now arises is, what is the supreme Federal law of force in this State, under Acts of Congress as pursuant to the Constitution of the United States.

In Padelford, Fay & Co. vs. The Mayor and Aldermen of the City of Savannah, the Supreme Court of Georgia, at January term, 1854, in 14 Ga. 506, held that the Constitution of the United States was to be considered in the sense in which it was understood by the makers of it at the time when they made it, and that the Supreme Court of Georgia was coequal and co-ordinate with the Supreme Court of the United States, and therefore the latter cannot give the former an order or make for it a precedent.

But in Wrought Iron Co. vs. Johnson, decided April 4th, 1890,

84 Ga. 709, involving the right to tax a peddler, the same court says, "After the State has yielded to the Federal army it can very well afford to yield to the Federal judiciary."

"The doctrine of coequality and co-ordination between the Supreme Court of Georgia and the Supreme Court of the United States, so vigorously announced by Benning, Judge, in 14 Ga. 439, regarded now from a practical standpoint, seems visionary.

"Its application to this or any like case would be a jarring discord in the harmony of law. Moreover, any attempt to apply it effectively would be no less vain than discordant.

"When we know with certainty that a question arising under the Constitution of the United States has been definitely decided by the Supreme Court of that government, it is our duty to accept the decision for the time being as correct, whether it coincides with our opinion or not. Any failure of due subordination on our part would be a breach rather than the administration of law."

On the 28th of April, 1890, in Leisv vs. Hardin, 135 U.S.R. 100, it was held that a statute of Iowa prohibiting the sale of intoxicating liquors was in violation of that clause of the Constitution granting to Congress the power to regulate commerce, and sales by the importer of liquors in original packages, could not be prevented by the State laws on this subject. The law had been presumed to be the contrary since January term, 1847, Pierce vs. New Hampshire, 5 How, 504, and the States had acted thereon and in the exercise of their police power. After this decision an Act of Congress was passed August 8th, 1890, entitled one "to limit the effect of the regulations of commerce between the several States and foreign countries in certain cases," and enacted that "intoxicating liquors transported into any State or Territory or remaining therein for use, consumption, sale or storage, shall upon arrival in such State or Territory, be subject to the operation of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt thereform by reason of being introduced therein in original packages or otherwise."

This matter is especially referred to here to suggest the query how are we to know with certainty, and determine the conflict that is bound to arise in the mind of a conscientious attorney in the discharge of his professional duty to his client, when this prohibition question becomes, as it bids fair to do, of national importance, and he finds that the law laid down by the United States Supreme Court conflicts with that enacted by an Act of Congress?

Personally, I feel, in the language of the Chicago Law Journal, 10-11, "that it would be a dangerous and inexpedient experiment to obtain relief from any evil at the expense of a provision of the Constitution."

Now that the Supreme Court have construed the Commerce clause of the Constitution to allow such sales, Congress should not attempt to override it by an Act to limit its effect.

That a Republican Congress should legislate in any way to restore power to the States is remarkable, but until this Act is held as in pursuance to the Constitution of the United States, does it not become a part of the Georgia Attorney's obligation, in swearing to support the Constitution of his own State and the United States (in the language of our own Supreme Court), to accept the construction given the Constitution for the time being as binding on him, and not an Act of Congress, passed for the express purpose of defeating the ruling of the Supreme Court?

As this court has held, an attorney is not a civil officer but only an officer of court, is it not wisest to stop with the oath of the common law? I have unbounded faith in the American sense of justice and honor, but I feel the welfare of the profession will best be promoted and the interest of our clients will be safest in our hands when the attorney is required to swear only to truly and honestly demean himself in the practice of his profession according to the best of his knowledge and ability, rather than have him committed in swearing to support the Constitution of his own State, to all action of Congress as in pursuance of the Constitution.

We have just gone through the exciting events attendant upon the Force Bill, which passed the House at the last session of Congress and was with difficulty prevented from passing the Senate.

Who amongst us is willing that his oath of office should be held to sustain such a measure, as one enacted pursuant to the Constitution?

II. Our young brother having received his license (which is the only "quasi" title of nobility in this republic) which allows him to roam at large from one part of the State to another, the next important matter before him for consideration is that of location.

In my youth I heard it said, if you want to be a good lawyer, live in the country; if you want to be a good practitioner, live in the city.

The New York Law Journal of February 26th, 1891, 1330, which, as far as known to me, is the only daily law paper published in the United States, in speaking of country lawyers, says: "Men who were reared or trained in cities are apt to despise many of the characteristics of a country lawyer." . . . "Rarely is he such a slave to his profession as the active city practitioner. He is apt to be a better lawyer than his city rival. We use the word in its strictest sense. The country lawyer has had more leisure to read law, not for immediate service, but for absolute knowledge."

"The city man on his part acquires a species of lightning instinct, so that he can tell at a glance whether a reported case affects the case at bar one way or the other. But, as a rule, the pursuit of a line of study that he does not require for definite use is out of the question. It follows, that while the city lawyer generally knows how to quickly find the law, a country lawyer of ability and fairly studious habits who has arrived at middle life, commonly knows the law,"

I have quoted this language because of the great tendency to gravitate to a city. Whilst the writer in speaking of country lawyers may intend to include all those resident in smaller cities than the great metropolis, I cannot but realize its truth in general, if so intended.

As, under existing political circumstances with our friends of the Alliance in full power, young attorneys resident in the country or towns are excluded from politics, I know of no more favorable opportunity for our brethren of the country to become learned in the profession, which will redound to the benefit of the country at large, but in my own opinion, the location should be where most influence in his favor can be exerted; social position and friendship should not be ignored, and if a city must be selected, choose a seaport, where Courts of Admiralty exist, where

business is despatched more promptly and compensation to plaintiffs generally is larger than in any other court.

III. Our brother having located himself, the next question is, what provision does the law make for his fees?

By Act of December 28th, 1847, C. D., 363 it was made unlawful to tax any fee as part of the court costs for the benefit of an attorney, on any suit commenced after its passage, any law, usage or custom to the contrary notwithstanding. This was the law at the adoption of the Code, January 1st, 1863, when by section 406 it enacted, that unless otherwise stipulated one-half of the fee in any cause is a retainer and due at any time.

By this, Code, §2942, expenses of litigation are allowed, if the defendant has acted in bad faith or has been stubbornly litigious so as to cause the plaintiff trouble and expense, and in the case of Farrow rs. Bracket, 12 S. E. Reporter, 686, the court recently decided, that under this section, expenses of defending a suit brought in bad faith might be recovered in an action therefor.

This Code provided that in claim cases that the vigilant creditor should be entitled to his fees from the property condemned and also extended this principle to money that came into court by garnishment process, and was subsequently amended so as to put upon insurance companies the payment of attornoy's fees, where it was found that their refusal to pay was in bad faith.

But the most profitable source of revenue is, when a case gets into chancery and a fund awaits litigation as to the true claimant or to what lien it should be paid, the fund bears its own expense, and the counsel is compensated therefrom.

There is facetiously reported in Bleak House the celebrated case of Jandyce vs. Jandyce, to show how far such a doctrine can be carried, wherein it is stated as to such compensation. "This has been a great case, that this has been a protracted cause, that this has been a complex cause, that in the numerous difficulties, contingencies, counsels, fictions and forms of procedure there have been expended study, ability, eloquence, knowledge, intellect, high intellect, if the public have the benefit and if the country have the adornment, it must be paid for in money or money's worth."

While I refer to this case, it is proper to add, that Mr. Dickens wrote with the exorbitant bill of costs of the English Court before him, the tendency of which was to absorb the funds before

of the Act of 1847, to which I have referred. If any of our brethren have ever been called upon to do business with the attorneys in England or Canada, they will find the contingent fee, the no collection, no charge scheme, is purely American and confined to the United States.

These gentlemen practicing under the English law charge for what they do, the time employed in your behalf, whether successful or unsuccessful, even for the stamps they put upon their letters. Why should not this be so with us now?

When Georgia was settled it was by people opposed to expensive litigation. This feeling was then branded upon the legislation of the State and continues to this day, so practically no provision is made for the payment of this "Officer of Court." As an officer, he is required, where the defendant in a criminal case is insolvent, to serve at the instance of the court free of charge; he is also required in divorce cases, should the solicitor-general be absent, upon being appointed by the court, to serve the State free of charge.

It therefore follows that unless he can as an individual make a contract with his client (which I am frank to say he generally does), he goes unpaid.

Until recently the majority of our young brethren have been cut off from general practice in the Federal Courts. My own city, until February 15th, 1889, was situated over one hundred miles from a United States Court; so was Columbus, until by Act of February 9th, 1891, a court was required to be held there.

These sister cities, each upon the borders of their State, have been subjected to great inconvenience, delay and expense to suitors and citizens, but thanks to a Barnes and Grimes these difficulties are now removed.

The greatest value of these courts to the profession is in the foreclosure of mortgages on railroads running into different States, in which cases to the court first taking jurisdiction by seizing the road will be yielded control by the other courts, in which although you may be required to file original bills to assert your rights, all orders and decrees therein will be conformable to the action had in the court of original jurisdiction. This will not be yielded or surrendered up even after forfeiture





a receiver appointed under the State laws, as will be seen by the case in 7 R. & C. L. J. 462, where the court refused to turn over the assets of a corporation to the State's receiver for dissolution purposes.

With the passage of the Act of June 2d, 1890, to protect trade and commerce against unlawful restraints and monopolies, it seems that Congress is even in advance of the States as to such interstate transactions, and no more profitable source of benefit to the people and emolument to the profession has ever been enacted if the law is properly enforced.

IV. Our brother, having considered the sources of revenue, next has before him the question, "What shall he do to succeed?"

A veteran English attorney gives these seven requisites for success in litigation, a good cause, a good attorney, good counsel, good witnesses, a good jury, a good judge, and good luck.

But from a Georgia standpoint, I say, urbanity and loyalty to the court, knowledge of the facts and law of your case, correctness in your statements and conviction of being in the right.

But to successfully maintain yourself in your profession you must sustain your credit.

John Randolph, in the midst of one of his splendid rhapsodies in the Senate of the United States, paused and having fixed his eyes upon the presiding officer, exclaimed, "Mr. President, I have discovered the philosopher's stone; it consists in these four plain monosyllables 'Pay as you go.'"

In 83 Ga. 815, Judge Underwood is reported as saying in his famous address to a young attorney, "Debt and death sound very much alike, and there is but little difference between them."

In his last address at the Macon Fair, Senator Brown said to the farmers, "Avoid debt, but if you go in debt make it a rule to meet every engagement promptly, no matter what it costs you. He who never fails to pay a debt on the day it's due, as soon as his character is known, has the command of the purse of his county whenever he needs the money," and to the young men, "Realize the heavy responsibility resting on you, which is great, and you must come up to the full measure of your duties."

The most serious obstacle in the way of the profession proving successful and remunerative, I consider—

1. The low salaries of our judges.

As far back as May 19th, 1838, in his preface to his reports, Judge Robert M. Charlton says, "The truth of the matter is, that it is time the attention of every intelligent man in our State should be directed to the evils of our judicial system. An independent and wise judiciary is the surest safeguard to liberty and life, and we must pay our judges better and ask less from their bodies and minds before we can attain to our proper station. Industry and economy are doubtless cardinal virtues in a Democratic government, but they may like all good things be carried too far"

Our judges are but human, and I fear for the future that the judicial conscience may become satisfied when the judge has worked what he considers a sufficient length of time to discharge his obligation based upon the remuneration which has been provided for him.

- 2. The "no cure no pay" idea that is on the increase with clients, and which is making the law a matter of speculative business.
- 3. The putting on the debtor by written contract the payment of the attorneys' fees of the plaintiff.

The two last named have the effect of putting a speculative character on the relationship which is certain to reduce the tone of the profession and make it a matter of hard sharp business.

To obtain a greater income from their profession, our brethren must see to it that that provision of the law which enacts that no levy shall be made on money or negotiable securities in the hands of the defendant is repealed, and provide for supplemental process after execution to reach these and everything else the debtor has above his exemption. As matters now stand a return of nulla bona upon an execution practically terminates a plaintiff's rights. With such a process the defendant could be compelled under a rule to show cause to purge himself of his contempt in disobeying the order of the court by not paying the debt, or be compelled to disclose after an examination under oath the money, bonds and negotiable securities carried in his pocket or locked up in a safe deposit box of a bank or even deposited as collateral for a small loan to prevent its being reached by garnishment process.

Formerly creditors could use bail process and thereby obtain security for the presence of the debtor to answer the judgment.

to take the benefit of the honest debtors' act, under which proceeding an issue could be made as to the amount of property he possessed and he be compelled to surrender up all his property after due examination under oath. But since the passage of the ordinance of the Reconstruction Convention subsequently inserted in the Constitution of 1868 and 1877 imprisonment for debt is abolished, and we are now without any certain way of compelling a man to purge his contempt for the court that has rendered a judgment against him when refusing to comply with the order of the court to pay and has the ability.

In addition to this, the laws of life insurance, Code, §2820, should be amended.

Our Supreme Court has held, 75 Ga. 755, that money paid out by an insolvent debtor cannot, to the extent of such payments, be reached by an existing creditor, although the policy was assigned to him as collateral by the wife as beneficiary. It is not just to the creditor that after the death of the debtor all should go to the beneficiaries; only the surplus should go. The debtor disregarding the judgment of the court that he should pay applies his money to another purpose, and to the extent of such application after judgment rendered it should be made liable to the creditor, unless prevented by a homestead claim or application for a year's support.

Georgia as the protector of the separate estates of women stands preëminent, but is it not time to halt and consider the rights of creditors.

The second section, sixth paragraph of the Bill of Rights, Code, \$5023, confers upon the Legislature the power to provide for the punishment of frauds and required the General Assembly "to provide by law for reaching property of the debtor concealed from the creditors."

In the language of Justice Hall, 71 Ga. 818, it is time to revive the recollection that by our Code, §1945, the rights of creditors should be favored, and every remedy and facility afforded to detect, defeat and annul any effort to defraud them of their just rights.

But whatever our brother may do, he, in my opinion, should confine himself exclusively to his profession. To combine it with any other business or calling, however prominent or lucra-



tive it may be, will unfit him for the proper discharge of his professional duties and prove derogatory to the administration of justice. He should never speculate, but realize fully that eminence at the bar is only attained by severe study, self-denial and absorbing devotion to the profession.

V. Our brother will not be engaged any length of time in th practice of his profession before he comes in contact with what has been aptly styled, "the new feudalism," under which it is charged, "that organizations have practically eradicated the individual. The small manufacturer is no longer an independent factor in the business of the country. The small trader has been swallowed by the big companies. The small manufacturer is merely a foreman. The small merchant is simply an agent."

Referring to the past, we find that which chiefly distinguished the old feudal system "are the numerous grades of dependence and the manner in which all parts of society were bound together in one system of lord and vassal." But under the new system all the ties are monetary, subject to barter and sale, and everything is animated by cold, callous greed and selfishness.

The prominent means by which this state of affairs is carried on is through trusts, principally corporate ones.

My attention has been called to a publication in a Western paper of what purports to be an extract from a letter written by President Lincoln a few days before his death, in which he states, "I see in the future a crisis arising which unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned, and an era of corruption in high places will follow, and then the money power of the country will prolong its reign by working upon the prejudices of the people, until all wealth is aggregated in a few hands and the republic is destroyed. I feel at this time more anxiety for the safety of my country than even in the midst of war."

Whether he wrote it or not, the fact exists that the money power of the country and government is now mainly in corporate hands, that apart from corporate law and suits for and against corporations, our profession have little to do that is remunerative.

How they are enthroned in Georgia can well be determined by an examination of the Acts of the Legislature and inspection of the Book of Charters now required to be kept by the Clerk of the several Superior Courts and the office of the Secretary of State, where many papers are required to be filed.

By Act of October 1st, 1883, P. L. 148, all railroad companies doing business in this State were required to file with the Secretary of State within twenty (20) days after notification from the Governor a full and complete copy of the charter and all amendments thereto, under which they operate.

A proclamation from the Governor was duly issued on the 21st day of January, 1884, in compliance with this Act.

By Act of October 12th, 1885, P. L. 132, this Act of October 1st, 1883, was amended so as to require the publication of the returns with the Acts and Resolutions of the General Assembly and also to require the publication of all certificates of organization or agreements of association by the purchasers of any railroad companies pursuant to the Act approved February 27th, 1876, to enable the purchasers of railroads to form corporations and the Act providing for a general law for the incorporation of railroads approved September 27th, 1881. No publication was ever made in conformity to this Act.

On the 28th of February, 1876, P. L. 12, an Act was passed providing for keeping a record of all bonds issued in this State which required returns to be made by all public and private corporations to the Secretary of State, showing the amount and character of all bonds issued or endorsed by such corporation.

On the 28th day of January, 1890, the Governor of the State issued his proclamation reciting the Acts of October 1st, 1883, and February 28th, 1876, and after stating that "the records in the office of the Secretary of State show that the Act of 1883 and that of 1876 have not been strictly complied with," ordered a compliance therewith within twenty (20) days, and that when such publication has been completed the penalties prescribed in the said Acts be immediately enforced against every public and private corporation which may still neglect or refuse to comply with their provisions and against every person who, after the expiration of twenty (20) days from that day may violate the provisions of the Act of 1876.

As to all papers filed with the Secretary of State, our Supreme Court have held they will take judicial notice thereof, so that it behooves the public to have knowledge in some way of what these various corporations admit liability for and the authority under which they claim to act.

To no one person or authority are they subject to inspection except in the case of banks by the State Treasurer or by suit brought asking the court to exercise its visitorial power, and no appropriate legislation has been enacted to carry out the provisions of the article of the Constitution as to the exercise of the police power over the conduct of their business or prohibition against authorizing the purchase of shares in other corporations in this State or elsewhere. If such be the case with our own State corporations, what shall we say in reference to foreign corporations?

By our Code, §1675, they are recognized only by comity, and so long as the same comity is extended to Georgia corporations.

The laws of other States and nations have no force here other than provided by the Constitution of the United States and recognized by the comity of States, which our courts enforce until restrained by the General Assembly, so long as its enforcement is not contrary to the policy or prejudicial to the interest of the State.

This policy in Georgia is to be found in the Constitution, which declares that the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the rights of individuals or general well-being of the State, and makes illegal and void all contracts to defeat or lessen competition or encourage monopoly.

The Supreme Court of the United States, in 101 U. S. 356, say, "In harmony with the general law of comity obtaining among States composing the Union, the presumption should be indulged that a corporation of one State, not forbidden by the law of its being, may exercise within any other State the general powers conferred by its own charter, unless it is prohibited from so doing either in the direct enactments of the law of the State, or by its public policy to be deduced from the general course of legislation, or from the settled adjudications of its highest court."

In a recent case decided by the Court of Appeals of Texas, 15 S. W. 505, it construed a late Act authorizing the organization of mercantile organizations as a direct prohibition against the operation of foreign corporations in that State, holding that the rule of comity does not extend so far as to make valid the charter of another corporation obtained in another State for the

sole purpose of evading the law of and doing business in Texas, the court citing 6 Kansas, 254, which states that "comity was never accorded for the purpose of giving any State unlimited power to dispose of the franchises of acting in a corporate capacity in another State, or to "spawn corporations" for that purpose.

Further, that it is not necessary that a State should, by express enactment, exclude foreign corporations in order to indicate that they shall not be allowed to act within its jurisdiction; the will of the State may be implied from its general policy and legislation.

Our own Supreme Court, in 66 Ga. 529, say, while they recognize the rule of comity by which foreign corporations are permitted to exercise the privileges in this State which are granted to them in other States, that courtesy to the foreign State "extends no farther than to permit her child to do here what the child may do at home." What shall we say then in reference to foreign corporations which are granted privileges to be exercised in other States and not in the State creating them, yet such is the language in the charter of a foreign corporation now controlling to a great extent the railroad interests of this State. not the exercise of this authority uncontrolled contrary to the public policy of our State, and should not some law be enacted. either in the exercise of the police power of the State or otherwise, pursuant to the provisions of the Constitution, which, while giving full protection to corporations of our sister States, shall grant to them the right to exercise only such privileges as our own corporations shall have and exercise amongst us, and which their own State may grant to them, to be exercised therein. and require at the hands of all corporations, and not only foreign insurance companies, to take out a license in this State before doing any business here, filing statements of their assets and liabilities, and holding themselves, as to the business done in this State, amenable to her Constitution and laws, and liable to suit "in personam."

VI. On the 19th of June, 1215, through the instrumentality of the church and Barons of England, the Magna Charter was signed; to have produced which, and preserved it to maturity, "constitutes the immortal claim of England on the esteem of mankind."

The clause that "no freeman shall be affected in his person or property save by legal judgment of his peers or by the law of the land, has well been called the bulwark of liberty, but is now, to a great extent, practically set at naught. Has not the time come to modify it at least as to the rendition of verdicts in civil cases?

At our last session an admirable address was delivered on this subject, upon which you will doubtless take action, but I cannot refrain from presenting to you the summary of the report of the Imperial Commission of China, upon what is facetiously called the "Melican man's Jury," wherein they name three objections thereto.

- "1. While the weighing of evidence requires a trained mind, the jurors are chosen at random and are chiefly uneducated men.
- "2. The verdict is required to be unanimous, making conviction next to impossible in cases that admit of a difference of opinion.
- "3. To secure impartiality they are required to declare beforehand that they have formed no opinion on the subject; they are accordingly men whe either do not read or do not reflect."

Over the signature of Idler, a Georgia journal said recently: "Just look at the progress in science, and art, and journalism, and dentistry, and railroads, and surgery, and architecture, and Statecraft, and machinery, and almost everything else, and then turn and gaze upon the law. There you are, the same old cobwebs, the same old hair-splitting technicalities, the same old ridiculous forms, the same old ridiculous ramifications, the same old entangled labyrinths and the same old a good many other things, not forgetting the same old law's delays which Shakespeare made Hamlet lament over four hundred years ago." This is the language of a laymen who can find fault like the China Commission; but must we not improve and simplify the law and its procedure, must we not make it more certain and less uncertain, is it not wisest to lessen the power of the jury and exalt the position of the judge? The law must be supreme, and not capable of being defeated by inattention or disregard of the charge of the court, and where the plaintiff cannot recover under the law, why should he be allowed to recover through the prejudice of the jury; why allow a recovery through the prejudice of a jury, when, by law, he ought not to recover; shall the reiterated prejudice or affirmance of juries be permitted to override the majesty of the law? I trow not. The jury is to aid the court, not govern it; and ceasing to be an aid, its large discretion should be curtailed and the judge allowed to give direction in civil matters. At least after the abolition of differences between suits at law and equity, except as to the prayers for relief, should not the jury in every case be required to find only the facts to which the court should apply the law?

In the North American Review of February, 1891, appears an article entitled "Can Lawyers Be Honest?" This closes with the question, "Who will rescue a most honorable calling from its present unfortunate environment?" This author, from his many questions, fails to appreciate the different positions a lawyer is required to assume in the progress of events. He has been styled "Why? Why?" and his article has called forth many replies, among which is one in the April number of the same Review, the author of which says, among other things, "Whenever Utopia shall come and every one employ his time in standing at the door of his hut descanting upon the virtues of his neighbor and his own infirmities, then the lawyer will be relieved of a large part of his duties, but not before."

"Sir." said Dr. Johnson to Sir William Forbes, " a lawver has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider, sir, what is the purpose of the courts of justice. It is that every man may have his cause fairly tried by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed: but he is not to usurp the province of the jury and of the judge and determine what shall be the effect of evidence, what shall be the result of legal argument. If, by a superiority of attention, of knowledge, of skill and a better method of communication, a lawyer hath the advantage of his adversary, it is an advantage to which he is entitled. must always be some advantage on one side or the other, and it is better that the advantage should be by talents than by chance."

Our own Chief Justice has said (Journal, 1886, 118), "The truth or the justice of a case as a whole is not upon the conscience of counsel for either of the parties. Such a burden would be inconsistent with the very work appointed for him to do."

In my judgment, when a client employs an attorney it is to protect him as to all the rights which are given him under the law of the land, and whatever may be the client's motives, I consider it the duty of the attorney to see to it that all of those rights given to him are protected, using, however, only those means that are consistent with truth, and never seeking to mislead the the judges or juries by an artifice or false statement of the law.

If an opinion is asked, however, in advance of instituting legal proceedings, an attorney should act purely in a judicial capacity, and dispassionately view the facts and circumstances made known to him, and advise accordingly. Only when an attorney is animated or controlled by a spirit of partisanship or litigious pugnacity can be become amenable to such criticisms and condemnation.

Brougham is reported to have said, "It was the duty of the lawyer to go to all extremes to further the interests of his clients, even though he should involve his country in ruin."

But Lord Cockburn, in the course of his speech at a dinner given to the eminent French jurist, Berryer, is said to have turned to Brougham and made the famous remark that "The lawyer must wield the sword of the soldier and not the dagger of the assassin."

One of the features of the Farmers' Alliance is opposition to lawyers', or so-called lawyers', rule. The history of the past shows that it is not only the farmers who have manifested distrust towards the profession, but this has mainly arisen elsewhere. In the language of the American Commonwealth, "The disposition to simplify and popularize law, to make it less of a mystery and bring it more within the reach of an average citizen, has naturally tended in America to lessen the corporate exclusiveness of the legal profession and do away with the antiquated rules which had governed it in England."

This diposition is manifested by the laws of this State, which only require admission upon proof of good moral character and the ability to stand an examination in open court upon the subjects prescribed by the statutes. It does seem to me that the time has come when, under the general system of education obtaining in our State and the strong tendency to impose taxation, general as well as local, for this purpose, to require as a part of the educational system, particularly in the high schools, wherever they



obtain, that law itself should be taught, or at least the laws of business.

In no way can this be more completely accomplished than by placing certain text-books containing these fundamental principles into the hands of the student and thus fitting him to discharge the duties of manhood.

I do not mean such instruction as the student would receive at the Lumpkin Law School or Mercer University, which would entitle him to admission to the bar, but I do mean sufficient instruction to fit him financially to make his way up and to avoid the many mistakes made in entering upon a business life, so that he can apply it in pursuing the ordinary avocations of life. How many men have learned only from bitter experience that a partner is liable for all the debts of the firm, regardless of how little interest he may have in the profits and losses of the firm. How many of our citizens have recently learned to their cost that signing a subscription list, even in a foreign corporation, over twenty (20) years ago, makes them liable to pay, when called upon by a court of a foreign State, regardless of the circumstances under which the subscription was made or the representations then made to induce them to sign, the only question being did they sign.

How many know the meaning of watered stock in a corporation, or freezing out the minority, or playing what is called "hankey pankey" with corporate obligations?

All this information could be so readily attained and the losses avoided by instruction by means of a text-book like "Parsons on Business" for a few months in a year, or even, if necessary, by occasional addresses to the classes by persons informed on the subject.

In this State, for many years, under the general laws collecting a tax for the support of the government, the specific sum of ten dollars has been imposed upon lawyers, who since December 14, 1861, have been liable to be stricken from the roll if they failed to pay. Why should not this money so collected in each county be applied with legislative sanction to the purchase of the textbooks referred to, and thus enable us to do away with this prejudice against the profession?

Statistics show that ninety per cent. of men in this country who enter business fail in their first venture. May not this want of

instruction and information as to the laws of business be the cause? If time and attention were given to an investigation of the subject it would be found that the reasons for so many failures are most often traceable "to some infraction of the laws of business, unseen and unappreciated until after a vain struggle the catastrophe comes."

In this age man is most useful and most highly appreciated for what he knows and the ability to apply that knowledge. Our eloquent brother, Mills, says "The human nature of the law—the golden chain that binds the scholar and the student to his race—dedicates genius to humanity and glorifies the world by a class of men whose philosophy is the welfare of others, whose inspiration is the cause they advocate, and whose strength is the justice of that cause; the human nature of the law it is, whose recognition from the people gives to the atmosphere of our grieving day a color of consolation."

Will not our people, therefore, welcome and aid any movement that will benefit human nature and properly educate our youth?

Whilst we may always expect, from the harm done and which will continue to be done in individual instances by dishonest and unfaithful attorneys, that the profession will be condemned as a whole, yet we know that the world, like St. Paul, who was taught according to the perfect manner of the law of the fathers, when he needed counsel, will act likewise and write, "Bring Zenas the lawyer on his journey diligently, that nothing be wanting unto him."

The history of the world shows that lawyers were always "at the front, battling for the right and defending the weak, with none superior in social progress and amenities, reforms and all measures for the public good."

The Scriptures say, "We know that the law is good, if a man use it lawfully."

In view, therefore, of the history of the church and the State in the past, should not our younger brethren be taught that "not books, but their application, interpretation and adaptation make the law, that they are to think and toil for other men, that to them the law is sentiment, philosophy and education, and not a mere means of livelihood or business?"

And furthermore should they not reach the conclusion and act upon it, that "the moral law, the common law, the civil law, the statute law, rests one and all on that highest of all laws, the will of the Almighty?"

## APPENDIX No. 2.

#### TREASURER'S REPORT.

COLUMBUS, GA., May 20, 1891.

To the Bar Association of Georgia at its Eighth Annual Meeting:

Your treasury is plethoric and your Treasurer consequential. inducted into the office he had slight conception of its dignity and importance. The administration of the office for one year has vastly increased that conception. He holds close and intlmate relationship with every member of the Association, from which relationship he derives both pleasure and profit. He determines the measure of fidelity of each member to the whole body, and when that measure falls below the required standard he strikes the name of the defaulter from the high honor roll of membership. Of the Executive Committee he is ex officio a member, and the Grand High Cockolorum. That august body, in its deliberation as to the welfare of the Association, dare not even determine as to that fixed quantity, essential to to the vitality of the Association, to-wit, a banquet, without having first consulted your important functionary, the Treasurer. His duties during the past year have been pleasant and refreshing. For a long time he allowed himself to be forgotten. At the opportune time, he announced that he was the lawful leader of the column to glorious times at Columbus, and immediately the whole fraternity fell into line.

Appended hereto is a statement of account, showing receipts and disbursements during the past year, accompanied by proper vouchers. Said appendix is adorned with parallel columns. If any member finds his name in the wrong column this is the time and place to change it, for which purpose the Treasurer is yours to command.

Respectfully submitted.

Z. D. HARRISON, TREASURER.

#### TREASURER'S ACCOUNT.

To	amount re	ceive	ed from former Treasurer			8	839	91
To a	amount of	f due	s collected as shown by list annexed				1,050	00
						\$	1,889	91
By	voucher		1\$					
46	44	44	2	250	00			
"	"	"	3	22	40			
"	"	"	4	20	50			
"	**		5	230	88			
44	44		6	3	90			
			_		00			

Ву	voucher	No. 8\$	4	00	
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	Relence			\$	1.080.58

The foregoing report is examined, vouchers compared, found correct, and report approved. May 20, 1891.

Executive Committee, by

THOS. J. CHAPPELL, Chairman.

	Unpaid	due	<b>38</b> .	Paid Last r		
Adams, A. P	\$			<b>\$</b> 1	lŌ	00
Adams, S. B	••••				5	00
Akin, John W					5	00
*Anderson, Clifford		5	00			
Anderson, C. L					10	00
Arnold, F. A	••••		00			
Arnold, Reuben			00			
Ashley, D. C		20				
Atkinson, S. R		10				
Bacon, A. O		-	00			
Barnes, Geo. T	•••	5	00			
Barnett, Samuel	•••				5 (	00
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Bartlett, C. L	•••					
Basinger, W. S					5 (	00
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Bleckley, L. E					5	00
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Brantley, W. G				3	lā	00
Burnett, Wiley B		5	00	)		
Bush, I. A					5	00
Calhoun, Patrick					5	00
Calhoun, W. L		15	00	)	-	

<sup>\*</sup>Paid since this report was audited.

Cameron, H. C.         5 00           Cannon, L.         10 00           Chappell, T. J.         5 00           Charlton, W. G.         5 00           Cheney, W. T.         20 00           Chisholm, W. S., Jr.         5 00           Clarke, M. J.         5 00           Cobb, A. J.         10 00           Coben, C. H.         5 00           Colville, Fulton         15 00           Cooledge, A. F.         20 00           Cotten, J. A.         20 00           Cozart, W. H.         5 00           Crawford, C. P.         15 00           Crawford, C. P.         15 00           Cumming, Bryan         5 00           Cunningham, H. C.         5 00           Cunts, E. H.         10 00           Davidson, J. S.         5 00           Davidson, J. S.         5 00           Davidson, W. T.         10 00           Dellacy, J. F.         5 00           Dell, J. C.         15 00           Denmark, B. A.         5 00           Denmark, E. P. S.         10 00           Dessau, Washington         5 00           Dorsey, R. T.         10 00           duBignon, F. G. <td< th=""><th>Callaway, E. H\$</th><th>10 00 \$</th><th></th></td<>	Callaway, E. H\$	10 00 \$	
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Erwin, Marion       5 00         Erwin, R. G.       500         Estes, Claude       5 00         Evans, D. B.       5 00         Eve, Edgeworth       5 00         Falligant, Robt       10 00         Featherston, C. N.       10 00         Felder, T. B., Jr       10 00         Fite, A. W.       15 00         Fleming, W. H.       5 00         Foster, F. G.       15 00         Ford, B. H.       5 00         Foute, A. M.       10 00			
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Falligant, Robt       10 00         Featherston, C. N.       10 00         Felder, T. B., Jr       10 00         Fite, A. W.       15 00         Fleming, W. H.       5 00         Foster, F. G.       15 00         Ford, B. H.       5 00         Foute, A. M.       10 00		3 00	F 00
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Felder, T. B., Jr       10 00         Fite, A. W       15 00         Fleming, W. H       5 00         Foster, F. G       15 00         Ford, B. H       5 00         Foute, A. M       10 00			10.00
Fite, A. W       15 00         Fleming, W. H       5 00         Foster, F. G       15 00         Ford, B. H       5 00         Foute, A. M       10 00		10.00	10 00
Fleming, W. H		10 00	15 00
Foster, F. G			
Ford, B. H		15.00	o 00
Foute, A. M			
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	*Paid since this report was audited.		10 00

<sup>\*</sup>Paid since this report was audited.

Fraser, W. W\$		\$	10	00
Freeman, Davis			10	00
Ganahl, Joseph	5	00		
Garrard, L. F				00
Garrard, Wm	_		5	00
Gary, W. T	5	<b>3</b> 0		•
Glenn, J. T				00
Goodynes C. P.				00
Goodyear, C. P	15	00	U	w
Grimes, T. W	10	•••	5	00
Guerry, DuPont				00
Gustin, Geo. W	15	00		-
Hall, Jno. I			10	00
Hall, Jos. H	10	00		
Hamilton, Harper	5	00		
Hammond, A. D	5	00		
Hammond, N. J			5	00
Hammond, T. A., Jr			5	00
Hammond, W. M	10	00		
Hammond, W. R			5	00
Hansell, A. H			15	00
Harley, J. A	5	00		
Harrison, Z. D			5	00
Hawkins, E. A				00
Haygood, W. A			10	00
Hill, B. H	25			
Hill, C. D.	15	00		
Hill, H. W.			10	00
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Hobbs, Richard				00
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Holton, G. J.	10	00	5	00
Hood, Arthur.			_	00
Hopkins, Jao. L				00
Jackson, Henry				00
Jackson, T. C			5	00
Jackson, W. E	15	00		
Jenkins, J. C	10	00		
Johnson, W. G	5	00		
Johnson, Stewart			5	00
Johnson, Richard			15	00
Jones, A. R			5	00
Jones, C. C., Jr			5	00

Jordan, J. T		5 00
Kay, W. E		5 00
Kibbee, C. C		10 00
Kiddoo, W. D.		15 00
		10 00
King, A. C		5 00
King, Porter		
Kingsberry, S. T		5 00
Lamar, J. R		- 00
Lanier, R. S		5 00
Latham, T. W		<b>1</b> 5 00
Lawson, T. G	15 00	
Lawton, A. R		5 00
Lawton, A. R., Jr		5 00
Leaken, W. R		10 00
Lester, R. E		5 00
Levy, L. C		5 00
Lewis, H. T		5 00
Levy, S. Yates	5 00	
Loring, C. A	10 00	
Lumpkin, E. K		10 00
Lumpkin, J. H		15 00
Lumpkin, Samuel		5 00
*Lyon, R. F	20 00	
MacDonell, A. H.	10 00	
MacKall, W. W	10 00	10 00
		15 00
Martin, E. W		5 00
Martin, J. H	15 00	5 00
*Mathews, H. A	15 00	
McAlpin, Henry	10 00	
McCord, C. Z	5 00	F 00
McDaniel, H. D		5 00
McDonald, J. C		5 00
MacIntyre, A. T., Jr		10 00
McLendon, S. G	20 00	
McNeil, J. M		5 00
McWhorter, H	5 00	
Meldrim, P. W		10 00
Mercer, Geo. A		
Meyer, Alex		5 00
Minis, A		5 00
Miller, Frank H		5 00
Miller, W. K		5 00
Mobley, J. M	10 00	10 00
Morgan, T. S., Jr	10 00	
Morrison, W. E	10 00	
Mynatt, P. L	10 00	
*Paid since this report was audited		
*raid since this report was audited.		

<sup>\*</sup>Paid since this report was audited.

N-1 I M		•	F 00
Neel, J. M\$	•	-	5 00
Newman, Emile	F 00	,	5 00
Newman, W. T	, 5 00		
Nisbet, J. T.	10 00		- 00
O'Byrne, M. A	F 00	•	5 00
Pace, J. M	5 00		
Palmer, H. E. W	15 00		- 00
Park, J. W	<b>5</b> 00	٠	5 00
Pate, A. C	5 00		- 00
Payne, J. C			5 00
Peabody, John			
Peabody, F. D			
Pottle, J. E	10 00	_	
Pressly, C. P			5 00
Price, W. P			5 00
Proudfit, A			00 (
Reese, W. M			5 00
Reese, M. P		5	5 00
Rhett, W. H	15 00		
Rockwell, T. D	10 00		
Rodgers, R. L		5	00
Rosser, L. Z	<b>15 00</b>		
Rountree, D. W	25 <b>00</b>		
Rowell, C	10 00		
Schley, Jno. S	10 00		
Seidell, C. W		5	00
Sessions, M. M		5	00
Sessions, W. M. (resigned)		5	00
Shumate, I. E	15 00		
Simmons, T. J			
Smith, Burton	15 00		
Smith, A. W	<b>15</b> 00		
Smith, C. C		25	00
Smith, E. A		10	00
Smith, Hoke		5	00
Spence, W. N	10 00		
Steed, C. P		10	00
Strickland, John J	5 00		
*Stubbs, J. M	5 00		
Sweat, J. L		10	00
Thomas, G. D		5	00
Thomas, L. W	15 00		
Tompkins, H. B		5	00
Thomson, W. S.		5	00
Turnbull, W. T.		20	00
Turner, H. G	<b>15 00</b>		
Turner, W. A	10 00	10	00
*Paid since this report was sudited.			

<sup>\*</sup>Paid since this report was audited.

Wade, U. P			10 (	00
Weil, S			10 (	00
Westmoreland, T. P			10 (	00
Whitehead, Jas				
Whitfield, Robt	15	00		
Wikle, Douglas	15	00		
Williams, E. T	20	00		
Wilson, L. A	5	00		
Wingfield, W. B	25	00		
Womack, E			5 (	00
Worrill, W. C			10 (	00
Wright, A. C			5 (	00

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Atkins, James	Dead.
Bigham, B. H	Resigned.
Bower, B. B	Resigned.
Chisholm, W. S.	
DuBose, Dudley	
Gregory, Walter	
Howell, G. A	
Roney, H. C	Resigned.
Sessions, W. M	
Smith, J. M.	
Van Valkenburg I E	

## APPENDIX No. 3.

#### REPORT OF THE EXECUTIVE COMMITTEE.

By THOS. J. CHAPPELL, CHAIRMAN.

Mr. President and Gentlemen of the Association:

The duties of the Executive Committee, as its name implies. are purely executive. Its work is supervisory and directory, and the result of it is to be found in the work of others that goes to make up the record of the Association. Being charged with the selection of a time and place for meeting, this time was appointed as being the most convenient to the many and least inconvenient to the few. This is the appointed place, not only out of respect to its claim for recognition, but also in deference to the wishes of the Association, as expressed at its meeting a year ago in Au-This committee has audited the accounts of the Treasurer and found them correct. That officer will present to the Association his report, and it speaks well for his efficiency. The improved condition of our finances is very gratifying. The great part, if not all, of the business details of the Association devolve exclusively on the Secretary and Treasurer and to the zeal and efforts of these officers the Association is indebted for its continued prosperity.

By resolution of the last meeting in Augusta steel engraved portraits of two distinguished Georgians were ordered to be procured and printed with the journal of the proceedings, and an extra edition of the paper on the Code of 1861, thus illustrated, was ordered for distribution among certain officers and institutions throughout the country. Apprehensions as to the ability of the Treasurer safely to stand such a draft caused the Association to modify the resolution so far as to refer the matter to the Executive Committee with power to act. The apprehensions which occasioned such a reference were so well founded that this committee did not feel justified in incurring the necessary expense, especially as the Committee on Grievances, by its report

the treasury to follow up certain investigations and proceedings with which it was charged.

The programme for the pre-arranged business of the session

has been printed and distributed in the hall.

The committee had relied upon other promised contributions, but were informed of the inability of the contributors to attend after it was too late to supply their places.

Mr. Z. D. Harrison, the Treasurer of the Association, is unable to attend on account of sickness. His report has, however, been presented. The Association has just elected Mr. H. R. Goetchius to act for the Treasurer during the present session, and the members are requested to report to him for the payment of their dues.

It will be seen that the local bar asks for the disposal of certain recess intervals.

In the last item on the programme, in the matter of a banquet the committee have respected a custom which experience has shown to be most honored in the observance.

The following gentlemen of the Georgia Bar have been elected by the Executive Committee to membership in this Association, and we ask that they be enrolled as such: S. B. Hatcher, Columbus, Ga.; W. A. Wimbish, Columbus, Ga.; Jno. D. Little, C. J. Thornton, Columbus, Ga.; Morgan McMichael, Columbus, Ga.; Jas. G. Moon, Columbus, Ga.; Edward C. Haskell, Columbus, Ga.; Judge Emory Speer, Macon, Ga.; B. F. McLaughlin, Greeneville, Ga.; Tol. Y. Crawford, Columbus, Ga.; C. E. Battle, Columbus, Ga.; S. P. Gilbert, Columbus, Ga.; E. W. Beck, Griffin, Ga.; G. P. Monroe, Buena Vista, Ga.; A. A. Dozier, Columbus, Ga.; J. H. Worrill, Columbus, Ga.; Allen Fort, Americus, Ga.; Frank H. Miller, Jr., Augusta, Ga.; A. A. Carson, Columbus, Ga.; T. A. Atkinson, Greeneville, Ga.

Respectfully submitted,

Thos. J. Chappell, Chairman.

## APPENDIX No 4

# "THE PERFECTION OF RIGHT, WHICH IS JUSTICE, THE IDEAL LAW"

A PAPER READ BEFORE THE GEORGIA BAR ASSOCIATION, By HON, E. W. MARTIN.

AT ITS ANNUAL MEETING IN COLUMBUS, GEORGIA, MAY 20, 1891.

#### Mr. President and Gentlemen of the Georgia Bar Association:

In Atlanta, not long since, a little five-year-old boy, living neighbor to our Superior Court judge, related to his wee companion of same age a profound secret. It was this, "he prayed every night that he might have the muscle of Sampson."

Mentioning the proximity to the judge of the Superior Court is not intended to convey the idea that the judge had anything to do with the prayer. It is sometimes curious and interesting to witness a contrast. The mention is made to illustrate that the example of this little fellow might well be followed in some instances—not in asking for more muscle, but mind. So it is in the duty about to be undertaken by me in the presentation of this paper.

It has been comically said by a distinguished writer, that, "Law is like a country dance; people are led up and down in it until they are tired. Law is like a book of surgery; there are a great many desperate cases in it. It is also like physic; they that take least of it are best off. Law is like a homely gentlewoman; very well to follow. Law is also like a scolding wife; very bad when it follows us. Law is like a new fashion; people are bewitched to get into it. It is also like bad weather; most people are glad when they get out of it."

The attainment of great and noble ends has stirred the aspirations of mankind through all the ages.





voluntarily awaken our aspirations, send forth our acclaim of praise and draw us out to like action. The devoted piety of the fathers of the past, spreading benevolence to the earth's ends, marks divinity in man, creates within a hope of better things and lifts to seeking same. The undying friendship of the true breathes blessings upon every recipient, tells of the sweeter part of human nature, and the achievements of mind and heart, wherever found, have their glory.

They are all expressions of the higher spirit in man, quickening, vitalizing, and fanning to warmth and glow the sluggish side of human nature.

All these, and others, inspire our lives and lift above its ordinary pursuits.

Who can witness the heroic action which has glorified the fathers of the American Revolution, and not desire to "go and do likewise?" Nor is it possible to survey the history of that movement which has shed "light in the dark places," and not feel the thrill of its impulse, and an emulation of like character.

The world-renowned instances of friendship, as typified in Jonathan and David or Damon and Pythias, will never fail to shed their benign inspiration and their gentle influence, as well as to quicken men with their example.

Akin to these and towering up like the stately mountain, is the work of "justice," which men have builded for a guarantee to all their rights and liberties. From the earliest ages, touched by the inspiration of this end, its followers and votaries have striven, endured and sacrificed.

The soldier cries, "Give me liberty or give me death." The jurist declares, "There must be justice or it is death." Touched with justice, new hope has reared again a drooping head—the weak look up. Awakened once more with animation, withering spirits take on new expectation and the oppressed breathe with freedom.

Viewing the past record of "justice," all along down the line of its history, I feel urged with a desire to present to this distinguished body something worthy of their consideration, heping at the same time to speak words and present thoughts of benefit and of progress, knowing full well that what is said falls upon the ears of a profession whose only aim must be to attain "justice" and "do right."

I would present as my theme, but not without fear of failure to do it justice, the following, namely:

THE PERFECTION OF RIGHT, WHICH IS JUSTICE, THE IDEAL LAW.

Great changes and great progress have taken place since the beginning. What was once "justice" would not now be recognized; and in the language of another—now famous in Georgia jurisprudence and destined so to go down to posterity, who has already written his autobiography—it would not be so recognized, even if one should "meet it in the road."

At first there was no expressed law, no statutes, no constitutions. Custom was the only law. Guided by this, all rights were sought to be defined and the protection of them carried out. These customs were founded on the law of right and wrong written in the bosom of man, or, it may be, as revealed in the Word of the "Most High." No Legislatures assembled. Constitutional conventions were unheard of; they bear the impress of modern invention, but without patent. Congresses and parliaments were not then even in embryo.

The breast of man was his lawgiver, and his memory was the archives of established custom; which was the only law.

Infected with the shortcomings characteristic of all the works of man, these works had to be perfected in the crucible of time. It will be interesting to watch their development, and see how some of them come to stand as the strongest guarantee of our rights.

"We are told, "the head of the house, or the chief of the tribe, was both governor and judge." At once the question confronts us, How could one man contain so much? Especially as at times, he was no doubt Legislature as well. The exclamation forces itself:

"And still they gazed and still the wonder grew, That one small head could carry all he knew."

No division of the executive and judicial branches of government existed. Strange as it may seem, though, even in those early times, decisions had to be rendered "according to the custom." They were not founded on whim. To quote the words of another: "Even in the punishment of slaves, it was not to be capriciously done, but sentence was pronounced and executed after a semi-judicial investigation."



Here we witness the first struggle for "justice." The budding expression of that desire in man to "do right though the heavens fall." This was the young infant of jurisprudence. It was unshapely and scarcely with open eyes, but with the parts that may be developed into mature manhood. Thus we see, as has been said, "at this early day, in those remote ages, two of the essential elements" of justice and law seeking to express themselves, namely, "stability and uniformity."

Gradually, from so small a beginning, has there been developed the present great system of jurisprudence. Imperfect though it may be, it is nevertheless our legal salvation without which there would be anarchy and confusion.

Slow though the work has been, innumerable are its blessings. What a retinue of good things have followed in the wake of its starting. We of the present day can scarcely conceive the condition of affairs without law. How can we think of a time when there existed no right of property, no law of contract, no rule of negotiable instruments, no right to devise or dispose of property after death, and what is more, no individual rights, but those rights and only those in common with the tribe or clan to which the individual belonged?

The ideal in every calling, profession and department of life is that for which we seek. We strive for and hope to attain it.

It is related of a young artist, who once overmastered his expectation, that he attained a work so complete as to appear to him perfection. It was not perfection, but, grief-stricken, he wept, fearing there would be nothing more for which he could strive—Alexander-like, nothing more for him to conquer. From the beauty and excellence of his work, this young master of art should have drank delight and satisfaction. But not so; it is not in the nature of man to rest. "All things are with more pleasure chased than enjoyed" by him.

No more have men been satisfied in the department of "justice." Its greatest minds have likewise been unwilling to stop at any attained point. In this respect, it would have been interesting to have witnessed the first trial by jury. Such a picture is in existence; whether wrought from imagination or facts, it is a remarkable scene. As the picture appears, the presumption of innocence in favor of the prisoner played no part. If such existed, it was surely rebutted by the prisoner's treatment in the very

presence of the jury. There he was as the guilty culprit. The victim, the murdered man, either disentombed or preserved, or yet too soon killed for disintegration, lay with gaping wound in full view. The ghastly form, with the death-blow on it, was alike exposed—a monitor of guilt. Collared and held by the officer of court (corresponding to our sheriff), he stood, already before his triers under the ban of guilt. No such uneven circumstances, at this day, in our land, surround the prisoner at the bar. He is not covered all over with suspicion and condemned by surroundings. He must be proven guilty, and that by evidence.

Protection against the suspicions naturally incident to the prisoner have been established. Safeguards have been thrown around evidence. Rules to keep pure the selection of juries have been laid down and made law, as well as numberless other ways blazed out for "the perfection of right—which is justice." Thus has there been a stepping toward "the ideal law."

Mark what changes even in this single line of jury trial. In the earliest of such trials we recognize two features of the present system. The rest had no existence. The first was exercised by the Romans. The other, as we are told, by the "German peoples who overran the provinces of the Western Empire, including the Angles and Saxons."

The Romans had the determination of facts in a judicial trial rendered by persons distinct from the judge. The German peoples maintained the selection of these persons from the "mass of ordinary citizens."

The Romans, though, while maintaining this principle of separate decision of law and facts, at the same time had for the determination of the facts a single person—sometimes called a "judex," sometimes an "arbiter." In some special cases, "several triers of the facts were employed." How they differed from the "arbiter" or "judex" is not known.

After this rude system had been continued for several centuries, "extraordinary" jurisdiction was granted the magistrates, "like the English Chancellor," and "he decided all the issues of fact and law in a single decree." Thus trial by jury in the rude state it then existed was for a time abolished.

On the other hand may be seen the opposite extreme. From the other principle, to-wit, that the determination of facts was HE PERFECTION OF RIGHT.

to be by persons from the common mass of citizens, taken, as stated above, from the German peoples overrunning the Western Empire, we see a trial by jury without a judge, and determination reached by customs "having the force of law." The jury determined the custom and made its application and construction.

From that beginning, the system of trial by jury has developed step by step.

In another stage of development, we have the strange spectacle of each party coming to the trial, "accompanied" not by witnesses, but by a number of "relatives, friends or neighbors, who, in the presence of the assembled freeman" (they being judge and jury), "joined with him in making oath that his statement—the charge or the denial—was true. These were called his compurgators." They were no witnesses. procedure indeed!

Then came a trial decided upon knowledge of the facts, but that knowledge was not derived from witnesses, but was the knowledge possessed by the jury itself. This kind of a jury was therefore taken from the "vicinage," and as some one has said-"a jury, as it were, of witnesses."

Now, what a change! We are told that "in the reigns of Anne and George II." . . . parliament interposed, abolished the rule of the vicinage, and provided that jurors should be selected from the body of the county." Following close on the heels of this. the King's Bench made the following decision, namely, "That if a jury rendered a verdict upon their own private knowledge, it was error; that they ought to have informed the court, so that they might be sworn as witnesses."

After that what was before qualification for jury duty ever became disqualification. What a radical change!

But what of the present? At what point have we arrived in the journey of "justice" toward perfection?

Many charges are made. It is said that the delay of "justice" is too great; that justice too often miscarries; and frequent are the intimations and suggestions of change, and getting a new system. That amendments could be made of much value cannot be denied. But let them be amendments on the old system -not the substitution of a new system.

That there have been shortcomings in particular instances under the present system is unfortunately too true.

Cannot this though be shown in nearly all cases to come from the abuse of the system and not its use?

The best of mortal institutions can be abused, and even the immortal has been subjected to like treatment. Shall we abolish them all?

Can it be said that medicine shall be abolished because sometimes the physician makes a mistake and kills? Shall there be no more gold used because we sometimes find its counterfeit spread abroad? Shall there be no more religion because we find impostors? Rather shall we not hold fast to the good and eradicate the evil?

The present system of jurisprudence is founded upon truths discovered in the earliest past. The spirit breathed into it at birth came from divine fiat. It is now hoary with age. It has been said of it. "Law is the emblem of the wisdom of ages."

It is true that sometimes the result is not what was expected, as has been claimed recently in the Mafia cases.

Such instances, though, are most rare, and frequently serve as monitors, telling of the great value of law, without which, and without the execution of which, our very natures revolt.

The people possess like nature wherever civilization is found; they disapprove and send forth their indignation and wrath against legal perversion. They are for law. Hence we find implanted the deepseated approval of, and respect in, man for law and its attendant blessings.

Who can claim, though, that such miscarriage of "justice" comes from the law. If the truth shall not be found in any trial, it comes not from the law, but from the want of carrying out what is law.

In the perversion of the high obligations of a juryman, we find not only the civil but divine law violated.

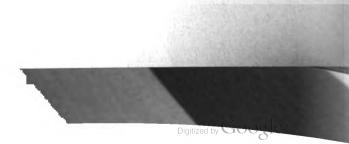
Would it not be as well to say the divine law is not as good as the civil? Both have been violated; both have received the same treatment; yet who will say divine law is not good?

The civil law has been violated and perverted, and will be until the constitution of man's nature is changed.

The fault is not in the legal constitution and the law; it is in the natural constitution.

There will ever be a striving to correct these imperfections, a seeking after the time when such exceptional violations will not





be committed. But the fault will be found not in the law, but in the failure to carry out the law.

The cry goes forth of "the law's delay." This delay, though, does not come from the law. Rather may it be said, that where continuances are granted, as provided by law, it is reason and justice to do so.

If an unjust continuance is granted, can it not be found in the perversion of facts, and not in the failure of the law?

The great mass of mankind, where civilization exists, possess within them a natural love of justice and law. It is only the exception to the contrary.

In this consists the maintenance of our judicial integrity.

. Let there be therefore remembered the boundless benefits of the law.

Let these exceptional miscarriages be only remembered for the sake of diminishing their number, and let the dignity of the law be held in high esteem, knowing that if what the combined wisdom of mankind through the ages has given us will not do, where can we hope to find something better! Would it not rather be like turning from the quicksands and shallows to split upon the rocks?

"And rather make us bear the ills we have, Than fly to others we know not of?"

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### APPENDIX No. 5.

### REPORT OF COMMITTEE ON JUDICIAL ADMINISTRA-TION AND REMEDIAL PROCEDURE.

(SUBMITTED ORALLY BY HON. W. B. HILL, CHAIRMAN.)

Mr. President and Gentlemen of the Association:

It was not practicable to obtain a meeting of the Committee on Remedial Procedure. I endeavored to procure a report by correspondence with the different members of the committee, there being five on the committee. I heard from three of the members, in reply to a request that they give their opinion upon the matters referred to the committee at the last meeting of the Association, and also upon two other matters that were suggested as proper topics to be embraced in the report, although not expressly referred to the committee by the action of the Association itself. These replies being received without any opportunity on the part of the members of the committee for a conference, there is naturally a very considerable divergence of views; and all I can do is to present a sort of composite photograph of the result of this correspondence. It is said by taking the pictures of a large number of people, as for instance a graduating class, the photographers can combine their features in one face that will be typical of the class.—a composite photograph; something like that is the only kind of report I am enabled to make up. page 39 of the proceedings of last year this resolution offered by Mr. McCord, of Augusta, was referred to the committee:

Whereas, At the ninth annual meeting of the American Bar Association, on motion of the Honorable George Hoadly, a resolution was adopted favoring a rule of court by which counsel in appellate courts are required to exchange briefs in advance of the argument;

Resolved, That the matter be referred to the Committee on Judicial Administration, and that they be requested to report

thereon at the next meeting.

Two of the members of the committee (Judge Falligant, of Savannah, and myself) are more favorably disposed towards the recommendation of such a measure than are the other members. The idea, doubtless, of the mover of the resolution was that the same practice which has prevailed very acceptably in the Supreme Court of the United States in reference to an exchange of briefs should be adopted by the appellate courts of the State. The rule of the Supreme Court of the United States in substance is that the briefs of the plaintiff in error are required to be filed in the court six days in advance of the hearing: that upon application to the clerk he shall furnish a copy of one of the briefs to the counsel for the defendant in error. The defendant in error is required to file his brief three days in advance of the hearing, and upon application made to the clerk by counsel of plaintiff in error he is entitled to see the brief of the defendant in error; so that practically there is an exchange of briefs, although it is not accomplished by the action of counsel directly, but simply accomplished by application through the clerk.

Mr. John Peabody: What is the penalty for a failure to file? Mr. Hill: The penalty is that the Supreme Court will not hear counsel who has failed to file a brief except upon their own request.

The main idea. I think, upon which two of the members of the committee are induced to favor the general proposition is that the argument of counsel is a real part of judicature. It is certainly the theory of the administration of law that one of the necessary stages in the process is that there should be before the court. as well as before the jury, argument of counsel. If, therefore, the very theory under which we live, the theory that explains the raison d'ètre of our profession, contemplates this stage of procedure as an essential and important part of judicature, it seems to us that it should be so regulated as to be of the utmost benefit to Counsel are not mere strategists, playing at a gladiatorial combat, with hidden daggers, each ready to "hit below the belt," but counsel are the friends of the court." Such is the language of Judge Nisbet: "They are the friends of the court and engaged with him in the sublime work of the ascertainment of truth." And if that is the part they play in the administration of justice, it seems that counsel would render a better service to the court if, by an exchange of briefs, they were prepared not only to present their own views, but to know in advance the views of the opponents, and to be able to investigate and discuss them fairly.

In the language of old Jeremy Bentham, the law, "judge-made law," to use his favorite phrase, "is not the product of judge alone, but the product of Judge & Company." By "company" he means the bar. [It is true that Bentham did say one rule was exclusively the work of the judges, and that was the rule which is expressed in the legal maxim that ignorance of the law excuses nobody except the judges. (Laughter.) He declares that the judges had made the rule, and the judges had made the exception; and when counsel realize that for their mistakes they are responsible to their clients, and in a measure to the country, while the judges are, by a solemn rule, laid down by themselves, exempt from liability for all mistakes, it is quite natural there prevails an ambition among the bar to get upon the bench, that sheltered haven, where they are relieved of responsibility for ignorance.]

There has recently appeared a book—many of you have read it, although it is certainly not of great literary importance—"Looking Backward," by Edward Bellamy, in which he advances the doctrine of Nationalism. He proposes to abolish the bar, but as a substitute for the bar he provides that there shall be employed by the State officers of the court who should perform the functions now exercised by counsel who are the representatives of parties; so that even in the very advanced view of this social reformer it is not possible to get rid of the functions discharged by the lawyers. While he proposes to abolish them as a class, it will be seen that even his far-reaching imagination has not conceived the possibility of abolishing the functions now discharged by members of the bar.

If, then, the argument of counsel be a substantial part of the administration of justice, ought it not to be as intelligent an argument as possible, an argument based upon an opportunity to know the contentions and to examine the authorities upon which adverse counsel rely?

I submit the following resolution:

"Resolved, It is the sense of this Association:

"1. That the exchange of briefs in the Supreme Court should be encouraged as one feature of the general courtesy and comity prevailing at the bar." I apprehend that all the committee might unite upon that.

"2. If the Supreme Court of Georgia should adopt a rule substantially similar to that which exists in the Supreme Court of the United States, providing for an exchange of briefs, the members of this Association would cheerfully recognize in such rule a measure tending to make the argument of counsel more intelligent and helpful to the court, to elevate the professional conception of the relation which the argument of counsel bears to the adjudication of cases, and thus to promote the due administration of justice."

The foregoing is concurred in by Judge Falligant and the Chairman. I understand that Mr. Peabody's opinion substantially agrees with ours, though not, perhaps, in the details of the matter.

#### TT.

Another matter referred to the committee is to be found in the report of the seventh annual meeting, at the conclusion of the address of Mr. Francis D. Peabody, of this city, on the rule of unanimity in jury cases. The concluding paragraph of that address is as follows:

"And speaking now to the legislature, through the ear of organized progress, the Georgia Bar Association, I offer the following amendment to paragraph 1, section 18, of the Constitution of Georgia: 'Provided, That the legislature may enact that some number of the jury, less than the whole, may make and return the verdict in all cases.'"

It will be observed that the adoption of that resolution would not necessarily commit every one who favored it to the approval of the principle of dispensing with unanimity, because the resolution itself contemplates nothing more than empowering the legislature to make such a rule. However, I presume, of course, that those who oppose the change would naturally oppose an amendment to the Constitution that empowered the legislature in their discretion to change the rule. We have all heard this morning an allusion by the President in his address to this very matter. It seems that the Chinese Mandarins have looked into the subject, and that jury unanimity is in their view one of the relics of barbarism.

Everything that is change is not progress; but if there is to be progress in this direction, I should like very much to see the State of Georgia take the advance step, because it would accord

with the record of our State in the matter of law reform. to me one of the most surprising things in human history that in the year 1799 there should have been adopted in the State of Georgia an Act that provided that special pleadings are abolished, and there should be no requirements in pleadings except the suitor or defendant should plainly and distinctly state his cause of action or defence. We have lately read, in the letters of Richard Malcolm Johnson, the statement that it was that Act of 1799 that furnished to Lord Brougham the suggestion of his reforms in English procedure. Fifty years after the adoption of the Act of 1799, a final judgment of a court of record, in the State of Massachusetts, was in mortal peril because the pleader had inserted an unnecessary "whereas" in the declaration. Coffin vs. Coffin, 2 Mass. 360. I recently fell upon an illustration of what was the law of pleading in England years after our Act of 1799. There was a plea of tender filed by a tenant, that he had tendered the rent to a landlord, and the pleader said he had tendered it in the afternoon of the day it was due. Justice Gibbs struck the plea on the ground that it alleged tender in the afternoon, without the allegation that he tendered it at an hour sufficiently early to count the money before the sun went down. And in the case of Bloss against Toby, in 2d Pickering, 320, a declaration drawn by William Cullen Bryant, a man who had learned to handle the King's English, was declared by the Supreme Court of Massachusetts to be fatally defective because the pleader had not mastered the language of the law, and William Cullen Bryant in disgust retired from the pro-While these things were going on in other places, Georgia as early as 1799 had swept away all such truth-defeating scholasticism. The mere fact that this resolution suggests a change will not of itself raise a presumption against it in a State that has led all other States in the union in the matter of law reform.

As remarkable as the Act of 1799 is the fact that in the Constitution of Georgia in 1798 there was a provision made for the codification of the law. In the year 1827 Governor John Forsyth, in a message to the legislature, construed that section of the Constitution as contemplating not simply a revision of the statutes but codification of the statute law, and of the principles of the common law and of equity jurisprudence that were of force in Georgia.

I was among the auditors at the meeting in Augusta when Mr. F. D. Peabody read his address in favor of abolishing the requirement of unanimity, and I confess, for one, I was convinced by it; and, so far as I could gather from the expressions of other members of the Association, they seemed to have been convinced by the argument that he made on that occasion. Now, it would be entirely outside of the scope of this report to enter upon the argument in favor of the proposition. The argument has been presented by Mr. Peabody better than we could do it.

The following shows the views of the committee:

"Resolved, That we favor the following amendment to the Constitution of the State adding to paragraph 1, section 18, of the Constitution of Georgia, these words: 'Provided, That the legislature may enact that some number of the jury, less than the whole, may take and return the verdict in all cases.' So that said paragraph when amended, will read as follows: 'The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate: Provided, That the legislature may enact that some number of the jury, less than the whole, may make and return the verdict in all cases.'"

This was concurred in by Judge Robert Falligant, Hon. J. M. Pace and myself.

From Hon. John Peabody's letter to me on this subject I read the following paragraph, in which he expresses his views:

"I am one of those who, having read the argument of F. D. Peabody, Esq., am not at all convinced that it is wise to change the rule as to unanimity of verdicts. When we once determine that some number less than the whole may make and return a verdict, I see no reason to stop until a bare majority will be sufficient. Then as the jury may be equally divided, we would reduce the matter to eleven, so that in all cases there will be a majority vote. But if popular opinion has so grown as to demand the change, I should recommend that the judge should have the power to set aside any verdict not unanimous, and grant a new trial upon verbal motion, and without brief of testimony, and such grant of new trial should not be subject to review. With this provision, perhaps no harm would result from the change; but I feel quite sure that neither courts nor people will be satisfied with verdicts when five or even four of the jury protest against it. In my judgment no person will ever be hung upon such a verdict, and we might as well provide that capital punishment should never be inflicted without a unanimous verdict."

There were two other matters suggested in the correspondence as proper topics for a report. I did not hear in relation to these points except from two of the members. The first topic was this: In a recent case the Supreme Court of Georgia called attention to the fact that the legislature ought to provide some restriction on the law of amendments so as to forbid making material amendments in a case after it has been given to the jury and they have retired to make their verdict. Mr. Pace writes that he is not in favor of any limitation; but as Judge Falligant suggests, a lawyer who does not know his case by the time it has gone to the jury, and the jury has retired, ought to be prohibited from troubling the court with any more amendments.

In the same connection Judge Falligant mentions in his letter that he would be very glad to see a statute adopted forbidding the dismissal of a case after it has been submitted to a jury, and the jury has retired for consultation.

The following is concurred in by two members of the committee

"Resolved, That this Association approves the suggestion made in a recent decision of the Supreme Court of Georgia that the right to amend pleadings should cease after the jury is charged with the cause, and that the Committee on Judicial Administration be requested to bring this matter to the attention of the legislature."

#### IV.

One other matter suggested in the correspondence was this. It relates to the law of criminal procedure, in the Federal Courts, and is embraced in the following resolution:

"It is the sense of this Association that Congress should provide for a Code of procedure regulating the trial of criminal cases in the Federal Courts.

"Resolved 2. That the Secretary transmit a copy of the resolution to each Senator and Representative from Georgia."

Mr. Justice Stephen said in a recent essay that the case law of England was chaos tempered by Fisher's digest, but the law of criminal procedure in the United States is chaos untempered by any digest.

It is a jumble of Federal law, common law and local State law. It is often as difficult to decide what is the source of authority as to decide what the law is. We think the moral influence of the Association should be given to Senator Cockrell's bill on this subject.

W. B. Hill, Chairman.



## APPENDIX No 6

# "THE PROPERTY RIGHTS OF MARRIED WOMEN: IS ADDITIONAL LEGISLATION NEEDED?"

#### By HON, H. A. MATTHEWS.

A PAPER READ BEFORE THE EIGHTH ANNUAL MEETING OF THE GEORGIA BAR ASSOCIATION, IN COLUMBUS, GA., MAY 20, 1891.

It will be generally and readily conceded that the laws of Georgia are extremely liberal and indulgent, both in providing and protecting the property rights of married women. That this is so should be to every intelligent and liberal mind a source of gratification.

I am aware that Sir William Blackstone made, in his Commentaries, a very similar remark in commending the liberality, wisdom and excellence of the provisions of the laws of England of his time for the welfare and protection of this important class of population. His complacent assertion upon this subject, however, is found in the same chapter in which we are told by him that a husband's right to administer a moderate castigation was still exercised by certain ranks of the people; "though," he naively remarks, "in the politer reign of Charles the Second this power of correction had begun to be doubted."

It is, however, absolutely true now, that so far as right to acquire, hold, encumber and alien property is concerned, the laws of all the States of the Federal Union make such broad and beneficent provisions for married women that the future critic of our times cannot indulge a smile at our claim that married women are favorites with the law-makers of the latter half of the nineteenth century.

The husband's "marital right" to appropriate all the wife's property held by her under a legal title has been totally abrogated everywhere. In Georgia this was accomplished by the Act of 1866, codified in section 1754 of the Code of 1882. The wife's "separate estate" is now a legal and not an equitable estate, and

requires no settlement or trustee to maintain it against the once formidable right of the husband. It includes all property at the date of the marriage and all acquired subsequently.

All those sections of our Code which were law previous to the Act of 1866, and which were for the purpose of defining and guarding the separate estate, as well as those sections defining the common law provisions as to the wife's property status, are now a dead letter, and in the future revision should be stricken out as tending to confuse, to the student, the present simple rule of our law that in all essential respects a married woman has the same rights as to her property that the husband has as to his, or that the femme sole has as to hers. Let us briefly note a few of these sections now standing in the Code that are practically repealed and rendered nugatory by the Act of 1866, the Constitution of 1877 and the Act of 1872.

In the first place, the provision found in section 2307 for creating separate estates, proceeding, as it does, entirely upon the idea that a trust must be created in the wife's behalf and a trustee appointed, is repealed. That this is true is obvious from the uniform decisions of our Supreme Court that a trust created in property for a married woman, where there is no remainder or limitation over, becomes at once an executed trust, and the equitable becomes a legal estate. 62 Ga. 738.

Section 2730 is no longer law in our State, for contracts of married women are generally valid, and not "generally void." Judge Bleckley, in Sutton vs. Aiken, 62 Ga. 738, speaks of the "exact parallelism between the sexes." He says: "With reference to her separate estate, a female, married or single, is now on full equality with a male, except in a few particulars defined by statute." In Georgia the "exact parallelism" extends beyond the technical separate estate and insures to a married woman every right, not only to contract with reference to her existing separate estate, but also the largest possible license to acquire a separate estate by her own efforts. Judge Jackson expressed the existing law, in Freeman vs. Holmes, 62 Ga. 557, when he said, though cautiously: "Perhaps, being a femme sole as to her present separate property and all her future acquisitions, to all intents and purposes she may now make any contract and it would be valid." This being true, she is a "free trader," and section 1760 of the Code goes by the board. In some of the States with

statutes almost identical with ours in reference to married women's property status, a less liberal construction has been made by the courts, as in 73 Michigan, 146, where the Supreme Court of that State says, "It has been held by a great preponderance of authorities, even under the broadest statutes, that a married woman has no right to contract a partnership with her husband. Under our statutes she has no power to contract except with reference to her separate property. The Constitution and statutes are clear against her right to make a mere personal contract unconnected with property." In Georgia, however, this question of a wife's untrammelled right to make personal contracts with the world at large (except her husband and her husband's creditors) has been fully settled by many adjudications of our court of last resort. See 70 Ga. 326, and 68 Ib. 257.

There would seem, therefore, to be no further need for section 1772 of the Code, which gives the married woman the right to put her money in the bank, and to draw it out again.

Section 1773 is likewise useless, for the Act of 1866, as construed in the cases above cited and elsewhere, confers a general power of owning property that certainly includes the "paraphernalia."

Marriage articles and settlements, as defined in section 1775, are practically superseded, and there is no longer any necessity that this section should remain, or that the seven sections immediately following should keep their places. In fact, no section of this entire article of eleven sections need remain, unless it be section 1783, and the only part of that section with any vital spark remaining in it, to-wit, the wife's disability to bind her separate estate by contract of suretyship, etc., would be better grafted on to section 1754, which is the vigorous root and stock of all our living law concerning the wife's property rights. By reason of the removal of all the wife's former disabilities to hold property, all the elaborate provisions by which the separate estate may be secured by indirection are useless, and are no longer employed.

All of the wife's peculiar rights are now adjudicated, with almost sole reference to the statutes and Constitution that have become law since these sections, useful in their day, first took their place in our admirable volume of State law.

These sections, however, show with great conclusiveness, that

the wife, while a favorite of the law, was not even under the former provisions of our actual law, a greater favorite than bona fide creditors of the husband, and in passing I would note the fact that in all these former provisions for the wife's benefit, creditors were also provided for. Thus, under section 1775, it was provided that "the rights of third persons, purchasers or creditors in good faith and without notice, are not affected by the marriage articles and settlements. This provision was repeated in section 1776; and in section 1778, which required the recording of marriage contracts, it was provided that, upon a failure to record the contract as directed, "such contract shall not be of any force, or binding effect against a purchaser, or creditor or surety, who, bona fide and without notice, may become such before the actual recording of the same."

These sections, while obsolete and of a former period of our laws' history, have left a most pronounced and salutary impression upon the decision laws which are now of force. A husband may not, now, in consideration of a marriage to be entered into, or of love for his wife, make a conveyance to his wife present or prospective, when the conveyance would prejudice creditors. While a marriage is still a valuable consideration, it is not in Georgia, I venture to say, a consideration of so high a dignity as would support a deed from a husband to the prejudice of his existing creditors. A different rule prevails in some States, and it is held that, unless the wife partook of the actual fraudulent intent, and of notice of the creditor's claim, a deed to her in consideration of marriage would be upheld against the creditor. This seems to be the law in Alabama, New Jersey, Maryland, Maine, Louisiana, Indiana and many other States. (See notes to Hagerman vs. Buchanan, 14 Am. St. Rep. 741.) But in Georgia. owing chiefly, I must think, to the posthumous influence of the wise and careful provisions of sections 1778, 1775 and 1782, creditors cannot be in this way defeated, and a man may not rush into matrimony as a safe refuge from the pursuing creditor. See 53 Ga. 416.

I make this reference to these provisions for benefit of creditors in these old sections, and to the fact that these provisions are preserved in the body of our laws, because, in the suggestion of some needed legislation which I propose to briefly make, I wish to stress these provisions for the creditor as being in the nature

of admirable precedents, that could properly be followed and extended by our legislature, in further defining the exact boundary line between the rights of the wife upon the one hand, and of the creditors of the husband upon the other.

Before leaving this part of my subject, I wish to note a few more sections of the Code, relating to married women's property rights, that are out of date.

Section 2410, in reference to the wife's capacity to make wills, is abolished. See 54 Ga. 346; 71 Ib. 695. In the first case cited the court say, "What we distinctly rule is, that a separate estate, arising by operation of law upon ordinary conveyances or upon other means of acquiring property, is not amenable to the restrictions of the Code, and that as to such estate the wife enjoys a power of disposition by will, independent of, and free from, the husband's consent or non-consent. This decision, which is affirmed in 71 Ga. 695, abrogates all of section 2410.

That provision of section 1894, which declares that the marriage of a *femme sole* partner dissolves the partnership, resting as it does upon the former incapacity of the wife to carry on business or to hold property in her own legal right, is no longer law, and should be stricken from the Code.

Of course there can be no such thing under the present condition of a married woman's rights, as a plea of coverture in bar; else the power to contract would be a sham and a delusion. Thus section 3477 becomes inoperative and occupies room in the Code, needlessly.

The Code, in section 1775, gives the husband the right to sue for torts committed upon the person or reputation of the wife. This, however, is not the law. Jackson, Chief Justice, in discussing this section of the Code, in 73 Ga. 481, said: "The truth is, that whatever restrictions were placed upon the married woman's right to sue in section 1755 of the Code, were put there before the woman's separate property rights were declared by law, and all those restrictions were swept away by the woman's law, and in so far as those sections may collide with section 1754, the Act there codified swept them away like a whirlwind, and they are gone to parts unknown, at least to parts outside the State of Georgia." By virtue of this section, however, a husband is allowed the privilege of joining his name with hers as plaintiff in a suit for a personal tort, but this is so purely formal and

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nominal, that it amounts to nothing, and the recovery is absolutely the wife's. She may sue alone, and it would be better, and more in accord with the simplicity of the laws now of force that she should sue alone.

A wife being thus, in all essential particulars, as to her property rights, a femme sole, occupying as she does a position of absolute independence of her husband's control, either of her property or her business actings, she should certainly be expected to stand up to all the responsibilities naturally connected with her enlarged powers and rights. If she holds the property, and is absolute mistress of all her actings and doings, she should be suable for torts committed by her. Section 2961 of the Code, as it now stands, puts responsibility for a tort committed by the wife upon the husband. It declares that every person shall be liable for torts committed by his wife, as well as those committed by his servant. In reference to servants, however, section 2962 (the following section) confines the master's liability to only those torts committed by the servant, while under the immediate direction and control of the master. Comparing the two sections. and remembering that the presumption of a husband's control no longer exists, it becomes plain that the husband's liability for torts committed by the wife no more exists than does his liability for her individual contracts, and that section 2961 is no longer law so far as it relates to the wife's torts.

I have thus gone over, in a synoptical way, most of the existing law as it appears in our Code, referring to the peculiar rights and disabilities of married women, for the purpose, first, of defining briefly the existing status of married women's property rights in Georgia, and secondarily to note the need that appears for striking out of our Code many sections relating to this subject that are no longer law. These sections may be useful as history, and as indicating the course along which we have come in arriving at the present position of our laws. They would seem, however, to have no more proper place in the Code of Georgia, than would a number of ancient Saxon words in a modern English lexicon. They have left their impress upon the present laws, but they have themselves gone the way of all things mortal.

The present status of our law being, so far as married women are concerned, thus defined, to wit: that in all respects in reference to property rights, she is upon a footing similar to a man's, it remains to be inquired what legislation, if any, is now needed?

I candidly believe that none is needed in her behalf. In view of her relations to the community, and of her merits generally, I would not take one step backward, but heartily join in commending the wise and liberal laws made for her benefit, and now of force.

All the laws giving her certain interests in her husband's property, such as dower, year's support and homestead, are based upon correct principles, and in most instances give her no more than her just deserts.

When, however, she stands thus before our laws, when she not only enjoys every property right and business privilege that the femme sole or the man enjoys, but in addition thereto has other special and peculiar provisions for her benefit, enjoyed by no other class of people, the question naturally arises, if she should not be required to deal with absolute fairness toward the business community. Should she be allowed in any case to use her privileges and her peculiar relationship to her husband and the outside world to the prejudice of ereditors?

We have noted the old provisions of our Code with reference to separate estates and settlements, how careful the law was formerly to protect creditors and purchasers in all cases of provision by the husband for the wife. Should not that same care be now had, that in no way and by no means should the marriage relation be utilized for purposes of fraud?

It is now a rule that no man can make a conveyance to his wife in fraud of his creditors. But what is fraud and how can it be proved? Fraud is recognized by the law to be subtle and hard to prove; too hard in very many cases of actual fraud for the defrauded party to bring the truth home to a jury with sufficient force to compel a verdict, especially against a woman.

One of the incidents of the unlimited property rights of the married woman is the right of her husband to sell to her his property for a fair consideration, and her right to buy it. This right is recognized by our laws, though they deny to the husband the right to buy property of his wife. Why there should be this difference it is hard to tell, but upon the husband's right to sell his wife his property in payment for debts he may owe her is founded more numerous cases of substantial injustice to the husband's creditors and more cases of downright fraud than upon any other single foundation. Unless there be a way of correcting

this evil that, according to every lawyer's experience, is widespread, we may begin to seriously doubt the wisdom of our system of laws for married women. I do not mean that the right of a husband to prefer his wife as a creditor is necessarily an evil, but I do not hesitate to say that this right, unless it be more guarded, will continue in the future, as it has been in the past, an opportunity for sharp practice that will not fail to be improved.

Judge Bleckley has well expressed the temptation to collusion between the conjugal pair in 57 Ga. 238, as follows: "When man and wife are acting together on the same side of a question of property, they are under temptation to do themselves more than justice. What is secured to one is apt to be shared by the other. With respect to enjoyment, however it may be as to title, neither is a stranger to the other's fortune. Contracts between them which retain in the family property that would otherwise go to satisfy honest creditors are to be subjected to strict scrutiny, a vigilant judicial police."

According to our laws, as they are to-day, a husband may use his wife's money for years, may buy property with it and make a show of perfect solvency, when he is in fact utterly insolvent. As between husband and wife the statute of limitation practically has no existence.

When money is borrowed by the husband from a person outside the family it is generally upon business principles, involving an investigation of the borrower's resources, and if the resources appear inadequate, security is taken in the shape of personal indorsements or of liens upon property. It is only in the case of transactions between husbands and wives that money is borrowed and lent upon an indefinite understanding that at some convenient season it will be repaid, when it will suit the mutual convenience of both parties. The convenient season is usually the time when it becomes necessary to prefer the wife as a creditor in the face of threatened business trouble.

It may be laid down as a general rule, with no considerable exception, that the husband will, in case of financial disaster, make his wife the preferred creditor to the full amount of his debt to her, with at least all the legal interest. Leaving entirely out of the consideration, for the present, that class of men who, in a pinch, are willing to set up fictitious debts to their wives, there are many cases where a man can truthfully set up a debt to his

wife and proceed to pay up the debt with property which has given him credit in the commercial world, leaving his other creditors with only a sad experience. May it not then be laid down as a general rule that debts from husbands to wives are, ab initio, preferred debts? True, they are not in the shape of mortgages or other liens until it becomes necessary that they should be put in such shape for the purpose of saving the property for the It would be much better for the public that these claims of the wife were in the shape of recorded liens, for then the notice would be given that would protect the public from extending credit upon a misapprehension of the resources of the debtor. These open, unsecured claims of the wife are none the less preferred debts, and frequently work to the great damage of honest creditors. Can nothing be done to remedy a defect in our laws by which so much advantage is permitted to be unfairly taken by husbands and wives of bona fide creditors, by which credit and confidence in business are so seriously threatened and disturbed?

Would not a simple statute, requiring wives to record all their claims against their husbands in the office of the clerk of the Superior Court, do much to remedy this evil? Let the law provide that the claim shall be recorded within six months, or any other reasonable time, not requiring any particular form of the claim, allowing it to be very simple as to its formal execution and only sufficient to indicate that the wife makes the claim. Then let it be provided that in default of such record, bona fide creditors, who become such subsequently to the time the debt was created, from husband to wife, and before the actual record of the wife's claim, shall be protected against any mortgage or conveyance made to her by the husband for the purpose of preferring her as a creditor.

Would this be too harsh and discriminating a law against the married woman's right? I do not think so.

If the wife's claim is in fact a preferred claim from the very beginning, why should it not be known? The policy of our law is that preferred debts should be notorious, so that subsequent creditors may contract with reference to them. This is true of mortgages and many other liens, and our registry laws are for the purpose of protecting bona fide creditors as well as purchasers, and a failure to record a mortgage or ueed, by which a simple creditor is entrapped is a badge of fraud that after overturns and voids the mortgage or conveyance.

If it be objected that no such requirement is made as to the registry of open unsecured claims of any other class of creditors, the answer is obvious, that the unsecured claims of no other class of creditors enjoy any such vantage ground as the claims of the wife. If the law intends and undertakes to make the wife a free trader and an equal competitor with other people in business matters, the law should hold her to a strictly fair competition. To do this the law should recognize that, while not technically partners in business, the husband and wife are practically partners in every business enterprise of the husband in which the wife's money is used, the money being used actually for the joint benefit of the domestic firm. The wife should be required, it seems, to negative the presumption that this is her purpose by a prompt and fair notice to the world that her money is in her husband's hands and that she claims it as a creditor.

It is true that our law, whether wisely or otherwise, presents assignments and transfers by insolvent debtors for the purpose of preferring one creditor above another, but it is expressly provided that such transfer must be without any reservation of any trust, interest or benefit to the assignor or any other person for him. Code, §§1952, 1953.

Inasmuch as a preference by the husband of the wife's claim, and a transfer to her to secure it, inevitably carries with it a resulting benefit to the husband himself, inasmuch as it amounts only to a taking money out of his money drawer and putting it into his domestic locker, ought not the spirit of this provision against the reservation of benefits to the debtor, find expression in some enactment of law that will fairly meet the anomalous condition of affairs here presented?

Again, a wife may give her husband money or any other thing of value. 71 Ga. 622.

Proceeding as all laws should upon a recognition of the natural laws of the human mind and motive, would it not be proper to recognize the fact that the money or the property turned over to the husband's control by the wife is usually treated by both as a gift? It would not be a bold statement to say that, in three-fourths of the instances, these transactions are so regarded by the wife and so treated by the husband. No record or books are kept, no annual settlements are had, the matter runs on for many years, and only when bankruptcy stares the family in the face does the hus-

band begin to cast up his accounts to see how much, how very much, he is indebted to his wife, while, perhaps, the grocer and the dressmaker are clamoring for their just claims.

If the intention be that the original transaction should be a business debt, what hardship would it be upon the wife to require her to notify the world that it was to be so treated? How could any objection be urged to this requirement, where no intention exists to take unfair advantage?

Our law requires juries to scan carefully all transactions between husbands and wives, to find the bona fides or the mala fides.

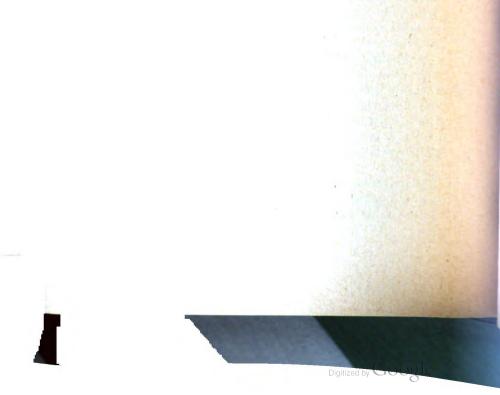
Ought not our law to afford to juries some means of looking into the true inwardness of these transactions, which, while not always black, are usually dark and obscure? Let the husband and wife admit the light of day into their trades with each other, and show that they are treating each other as independent members of the business community. Being a free trader she should be absolutely on an equal footing with other creditors, and she cannot be placed upon that equal footing in any other way than by requiring her to give notice, when she deals with her husband in business, whether she, in fact, intends a loan, a gift or a joint enterprise. She should be required to have an intention, and upon her failure to define that intention in an unequivocal and perfectly open manner, the law should define it for her, and define it in such a way as will not cause third parties to suffer.

I admit that there may be difficulties in drawing a perfectly satisfactory law, to carry into effect the crude suggestions of this paper, but I do not believe that any satisfactory reason can be urged why some legislation upon the line indicated should not be attempted. In the political language of the great politicians of the hour, "I am in favor of this or something better." I do not believe there would be anything impracticable or unjust in a measure that would fully protect the married woman in all her extended rights, while it required of her only to give notice to the world that she possessed a debt upon her husband, a debt which, in a contest over the assets of the husband, is to a moral certainty bound to be among the strongest of all the secured claims.

A provision of this sort would moreover be a protection to the honest husband and wife from suspicion of fraudulent intent, as no one could impute such intent, where full and fair notice is given of the debt at the time it is created.

And it goes without saying, that the law does not care to protect citizens in the carrying out of fraudulent purposes, so that we need not consider the inconvenience such a change of law as is proposed would entail upon those husbands and wives who would prefer to keep hidden from the public eye, the transactions between themselves, for fear they might injure the husband's credit.

In conclusion, it may be summed up by saying, that as the wife is the most favored subject of our law, as she enjoys more privileges and rights as to property than any other class, as, by reason of her peculiar business relations to her husband and the world, she owes to her husband's creditors absolute fair dealing; and as she cannot afford to her husband's creditors that absolute fair dealing without notice of her claims upon her husband, and as this notice cannot hurt an honest husband or an honorable wife, there would seem to be no insuperable objection to some such measure as that suggested.



# APPENDIX No. 7.

# REPORT OF THE COMMITTEE ON FEDERAL LEG-ISLATION.

To the Georgia Bar Association:

Congressional labor since the last session of this Association has been chiefly directed to the accomplishment of partisan ends, with but few results to break the monotony of pension legislation and political expedients.

A learned profession must feel some interest in the partial triumph of the international copyright law, qualified though it be with restrictions which tinge justice with the local coloring of the

protective doctrine.

Of direct importance to the profession is the bill increasing the salaries of district judges from thirty-five hundred to five thou-This is not only a measure of justice to the judiciary of the United States, but sets a wholesome example to the Legislatures of the States. It is something for counsel and litigants to bear in mind, that a judge who works on five thousand a year is less beset with the worries of life and less liable to failure in his efforts to make a satisfactory conjunction with a sufficing breakfast than when he went into the struggle for existence on the beggarly stipend of thirty-five hundred. The mental and moral possibilities inherent in an extra allowance of fifteen hundred are vast enough to command the profoundest respect of a bar accustomed, under legislative inspiration, to believe that a judge may not only live by bread alone, but, if properly constituted. exist irrespective of bread, or any adequate substitute, upon the house rent and taxes which he pays to others and the title which others accord to him.

The solitary result of Federal legislation which attracts extended notice, is the bill creating the Circuit Court of Appeal. In approaching the consideration of this measure passed during the last moments of the Fifty-first Congress, it is a pleasure to

reflect that such relief as may flow from the experiment is largely due to the persistent and intelligent efforts of a distinguished member of this body. Burdened court and delayed litigant must alike appreciate the substantial changes which are promised in the provisions of the Act. The scheme of the bill involves the appointment of an additional judge in each judicial circuit with Circuit Court powers. The Supreme Court judge, within whose jurisdiction the particular circuit lies, the present circuit judge and the added member constitute the appellate tribunal. It is invested with authority to appoint its several officers and formulate its forms and rules of practice, the existing rules governing appeals and writs of error being preserved. In the absence of any member of the court, a District Court judge may preside; no judge, however, sitting in review of his own decisions. appeal lies to this court in all cases save those in which the jurisdiction of the trial court is involved; final decrees in prize cases; convictions of capital or infamous crimes; constitutional questions: constitutionality of United States laws, and the validity and construction of treaties, and the unconstitutionality of State Constitutions and laws with reference to the Constitution of the United States. In all other cases the appeal lies to the new court, the appeal from the State courts of last resort to the Supreme Court being reserved. The decrees of the new tribunal are final where the jurisdiction depends upon the status of the litigants, patent, revenue and criminal laws and admiralty. It may certify to the Supreme Court any question of law, which last mentioned court may determine the question submitted or command the entire record to be sent up. A case when determined in the Circuit Court of Appeals is remanded to the original jurisdiction with instructions. The limit of time in which an appeal nay be taken is six months, the present restrictions in particular cases being preserved. In cases not declared to be within the appellate jurisdiction of the new court, the appeal lies to the Supreme Court when the amount involved exceeds one thousand dollars. The places where the court sits are named, that for this circuit being New Orleans. The tribunals from which appeals may be taken are the circuit, district and territorial courts, precedence being given to injunction cases.

An important and wise provision is expressed in the power reserved to the Supreme Court, by certiorari or otherwise, to have

certified to that tribunal for review and determination any case pending in the Circuit Court of Appeals. It would seem that this provision is a sufficient protection against any abuse of power upon the part of the new court.

The merits of the bill lie in the expedition of business, the relief of the Supreme Court, the check upon the powers of the subordinate courts, and the apparent simplicity of the machinery suggested. Your committee do not feel called upon to discuss the constitutionality of the measure. Its expediency is unquestioned and its restrictive features are wise and conservative.

Beyond the creation of a new division in the Northern District of this State, your committee is unadvised of any further legislation important enough to lay before this body. The delay in the publication of the statutes seriously impedes any investigation into the legislative work of Congress. The most blunted imagination can readily conceive of more exhilarating reading than the Congressional Record, and only the unknown transgressions of some prior existence can have made necessary the infliction upon any mortal of a patient consideration of the Journal of the House.

WALTER G. CHARLTON, Chairman.

# APPENDIX No. 8

#### REPORT OF COMMITTEE ON MEMORIALS.\*

Mr. President and Gentlemen:

Since our last annual convocation two members of this Association have died.

The Hon. JAMES M. SMITH departed this life in Columbus, Georgia, on the afternoon of the 25th of November, 1890. Born in Twiggs county, in this State, on the 24th of October, 1823, at a tender age he accompanied his parents upon their change of residence to Culloden. Manifesting a strong desire for intellectual improvement, availing himself of such advantages as were afforded by the institutions of learning in his neighborhood, and selecting the law as a profession, he was in due course called to the Bar in that town. During the war between the States he was in the military service of the Confederacy, and, as colonel of the Thirteenth Regiment Georgia Volunteers, was severely wounded in the engagement of the 27th of June, 1862. The following year he was complimented with a seat in the Confederate Congress. In the latter part of 1866 he became a resident of Columbus, Georgia.

Having served in the Georgia Legislature, and having presided as Speaker over the lower House of the General Assembly, he was in 1872 elevated to the gubernatorial chair of this State. It was into his hands—as the legitimate chief-magistrate of this Commonwealth—that the Hon. Charles Jones Jenkins placed the books and papers, and the seal of the Executive Department which he had courageously and patriotically retained in defiance of Federal usurpation. In consummating this memorable and heroic act that noble man said: "The books and papers I herewith transmit to your Excellency that they may resume their



<sup>\*</sup>It is due Col. Charles C. Jones, Jr., to note that while he modestly affixes the names of all the committeemen to his report, yet it is entirely the fruit of his eloquent and scholarly pen.—Secretary.

places among the archives of the State. With them I also deliver to you the seal of the Executive Department. I derive high satisfaction from the reflection that it has never been desecrated by the grasp of a military usurper's band—never been prostituted to authenticate official misdeeds of an upstart pretender. Unpolluted as it came to me, I gladly place it in the hands of a worthy son of Georgia, her freely chosen Executive, my first legitimate successor."

Governor Smith subsequently became a member of the Railroad Commission of this State, and at the time of his death was the presiding Judge of the Superior Courts of the Chattahoochee Circuit

He was a man of mark at the bar, on the bench, and in the political councils of this common wealth

For the following sketch of Judge Chisholm we acknowledgeour indebtedness to the memorial submitted to the Savannah bar by our distinguished brother, the Honorable General Alexander R. Lawton.

Walter Scott Chisholm was born in Columbus, Georgia, on the 17th of November, 1836. He died in the city of New York on the 15th of December, 1890. His early life was spent in the county of Liberty, at that time noted for the spirit of generous culture which pervaded its society and shaped the future of many Georgians who attained unto prominence. Graduating, under conditions full of credit and promise, from Franklin College at the early age of seventeen, he subsequently pursued his legal studies in the office of Law & Bartow, and was called to the bar in Savannah on the 29th of May, 1857.

Early in his professional life he formed a copartnership with the gifted Julian Hartridge. In the division of labor Mr. Chisholm was chiefly engaged with what is generally known as the office practice. There he soon acquired and maintained the reputation of a careful student, an accurate conveyancer, and a safe counsellor. In the language of the memorial, "Swift in his appreciation of the problems submitted, his mind worked to their solution with a lucidity and directness which invested his conclusions with the appearance of intuition." He was never, however, beguiled into a relaxation of his habits of exact study and exhaustive investigation.

From 1863 until the close of 1877 he was the Judge of the City Court of Savannah, a position which he held without opposition, and in the end voluntarily resigned. That an office, respectable in character and salary and "unfettered in respect to extraneous practice, should have been filled by him as long as he desired, and with the approval of bar and public, is eloquent acknowledgment of his ability."

Before retiring from the bench "the exigencies of a large and diversified practice called him frequently into the court-room. With the assumption of these duties began that exhibition of powers which was not without surprise even to those who had most confidence in his resources. The physical limitations under which for years he had rested with patience and cheerfulness forbade attempts at oratorical displays, but the clearness of statement, the logical development of each proposition in its appropriate time and place, and the inexhaustible resources of his intellect combined to render his arguments masterpieces of cogent reasoning, irresistible alike to court and juror."

Engaged in many important causes, his presentations of the interests of his clients were marvels of skill and full of persuasiveness, addressed rather to the intellect than to the emotions. He possessed also a wonderful self-control.

For several years preceding his death Judge Chisholm spent most of his time in New York City. There he was intimately associated with the management of more than one great enterprise, and the capacity he displayed when grappling with corporate and financial problems illustrated the breadth and scope of his intellect and materially enhanced his well-earned legal reputation.

In further compliance with the duty devolved upon your committee, we would revive the memory of one who, by the country at large, was saluted as the American Cicero, and of whom, when responding in behalf of the Supreme Court of Georgia to the memorial submitted by the Savannah bar, Chief Justice Lumpkin exclaimed, "As a lawyer and a citizen who will dispute with him the premiership?"

Born amid the shock of arms, within sight of the battle-field where the gallant Mercer and his brave companions yielded up their lives in support of the patriot cause, and of a parentage in which the valorous blood of the Huguenot commingled with that of a virtuous daughter of the land of Bruce, John McPherson Berrien first saw the light on the 23d of August, 1781, at the residence of his paternal grandfather, near Princeton, New Jersey. That grandparent was one of the Justices of the Supreme Court of that infant Commonwealth, and a friend of Washington. If we may credit a family tradition, it was while enjoying the hospitality of this home that the commander-in-chief penned his farewell address to his army.

Major John Berrien, the father of the subject of this sketch, was an officer in the Continental army, and his mother, Margaret McPherson, was the sister of John McPherson, who, as an aidede-camp to General Montgomery, shared with him a soldier's death before the walls of Quebec. Thus were his title to gentle birth and his inheritance of manly, patriotic traits fully assured.

While it is true-

"That each man makes his own stature, builds himself,"

and while it may not be denied that he who serves his country well stands not in need of progenitors to fortify his reputation, it is nevertheless certain that descent from honorable ancestry is itself a badge of merit, and that it proves not infrequently a potent incentive to the exhibition of a laudable ambition in the competitive race for public confidence and preferment. Transmitted virtues and hereditary excellencies, intellectual, moral, and physical, may well be reckoned as legacies of the highest value. They exert their influence, and enable the inheritor to stand up the more bravely against the "waves and weathers of time."

Shortly after the evacuation of Savannah by General Alured Clarke and the King's forces in June, 1782, Major Berrien, who during the war of the Revolution had seen service in this State on the staff of Brigadier General Lachlan McIntosh, removed with his family from New Jersey and fixed his home in the commercial metropolis of Georgia. In the impoverished condition of the Commonwealth, and in the absence of suitable educational advantages at the South, anxious that his son should obtain the best instruction the country then afforded, Major Berrien sent him to school both in New York and in New Jersey. His collegiate studies were pursued at Nassau Hall, and from this institu-

tion he received his degree of Bachelor of Arts at the early age of fifteen.

Returning to Georgia, he entered the law office of the Hon. Joseph Clay, son of a member of the Continental Congress and Deputy Paymaster-General in the Southern Department; himself an eloquent advocate, afterwards advanced to the bench of the United States Court for the District of Georgia. At a later period, laying aside his judicial robes, Judge Clay entered the sacred ministry and became a famous American pulpit orator.

His eighteenth year was not completed when Mr. Berrien was called to the bar. Ten years later he received the appointment of Solicitor-General of the eastern circuit, and before he attained unto his thirtieth year he was elected judge of that circuit. This position he filled with distinguished ability for ten years. In the volume of reports edited by the younger Charlton many of his decisions are recorded, and they betoken the research, analysis, and scholarly diction at all times characteristic of the professional labors of Judge Berrien.

While he was upon the bench the United States became involved in a war with England, and the Georgia coast was threatened and at times plundered by marauding parties of the enemy issuing from Florida and debarking from hostile vessels hovering about the outer islands. As a major of cavalry Judge Berrien united in the defence, and until the alarm was over saw service with his command in the vicinity of Darien and at other exposed points. During this period of danger and of excitement, in the double capacity of minister of the law and volunteer officer he discharged his duty to his country with fidelity, and with courage.

In 1812 the General Assembly of Georgia, moved by popular clamor, enacted certain alleviating laws which, in a large degree, practically closed the doors of the temples of justice in the face of creditors. To all save the debtor class—and it was very numerous—the evils of this legislation were apparent. At a convention of judges, composed of the Hon. John McPherson Berrien, of the Eastern Circuit; the Hon. Robert Walker, of the Middle Circuit; the Hon. Young Gresham, of the Western Circuit, and the Hon. Stephen Willis Harris, of the Ocmulgee Circuit, assembled in Augusta, four cases were presented in which the constitutionality of these lacts was boldly challenged, and the



opinion of the court in bank was invoked. On Friday, the 13th day of January, 1815, a unanimous opinion, prepared by Judge Berrien, was handed down, in which, after a full, lucid, and fearless discussion of the legal propositions involved, the conclusion was reached that these alleviating laws impaired the obligation of contracts, that they were unequal in their provisions, and that they were in violation of the Constitutions both of the United States and of the State of Georgia. This judgment, carefully prepared and comprehensive, which at the time of its rendition created no little excitement and elicited general comment, may be seen among the records of the Superior Court of Richmond county. It spoke volumes for the integrity and the manliness of the judiciary of this Commonwealth, and the fact that Judge Berrien was selected to frame the conclusions then reached was no mean tribute to the esteem in which he was held by his brethren.

Upon the termination of his judicial labors Mr. Berrien was elected a member from Chatham county of the Legislature. As Chairman of the Judiciary Committee it was his important service to suggest and press to its final passage a resolution which contemplated a careful compilation of the statute laws of England of force in Georgia. The culmination of this useful measure was apparent in the preparation, by the Hon. William Schley, of the Digest, which, having been examined and approved by the Hon. Thomas U. P. Charlton, the Hon. William Davies, and the Hon. Charles Harris, of the Savannah bar, and having received the sanction of the Governor, was rendered into type to the great convenience and manifest edification of the profession.

So commanding was the influence wielded by Judge Berrien during his short term of service in the General Assembly of this Commonwealth that he was, in 1824, elected to the Senate of the United States. When he took his seat in that august body on the 4th of the sequent March he had not attained unto the forty-fourth year of his age. Such, however, was the maturity of his views, such the breadth of his information, so exact his knowledge, so admirable his diction, so dignified his deportment and so impressive his intellectual and social demeanor, that per saltum he took rank among the famous men of that assembly. With no marks of age about him, so convincing was his logic and so elo-

quent his speech that Chief Justice Marshall styled him the "honey-tongued Georgia youth."

Resigning from the Senate in March, 1829, he accepted the position of Attorney-General of the United States in the cabinet, of President Andrew Jackson. The duties of this office he discharged for a little more than three years with unquestioned power and fidelity. His immediate predecessor was the gifted William Wirt, and he was succeeded by the famous Roger B. Taney, who, at a later period, presided for so many years as Chief Justice of the Supreme Court. The supreme bench was then composed of Chief Justice Marshall and Associate Justices Johnson, Duvall, Story, Thompson, McLean, and Baldwin. slightest inspection of the 3d, 4th and 5th volumes of Peters' Supreme Court Reports will convey a lively impression of the varied and important services rendered by Attorney-General Berrien. It is not an exaggeration to affirm that no one in the history of the government ever conducted the affairs of that high office with greater efficiency, decorum, or honesty. We may not even allude to the social cause which engendered an estrangement between the inexorable President and the members of his cabinet. Suffice it to say that Mr. Berrien saw fit, in June, 1831. to tender his resignation as Attorney-General of the United States. In accepting it General Jackson took occasion to express "his approbation of the zeal and efficiency" with which the duties appertaining to the office had been performed, and to assure Mr. Berrien that he carried with him his "best wishes for his prosperity and happiness." It is, I believe, not generally known, and yet such is the fact, that President Jackson tendered to Mr. Berrien the mission to England. This tempting compliment. however, was declined for private considerations which Mr. Berrien regarded as controlling.

Returning to his home in Savannah, he resumed the practice of his profession, finding inviting and remunerative employment not only before the Georgia courts, but also before tribunals of last resort in Florida, South Carolina, and at Washington. He had fairly achieved that pre-eminence which he so long enjoyed, and was recognized as the most distinguished lawyer of the South.

Although holding no office during the succeeding nine years, he was no idle spectator of public events. As a member of the

Anti-Tariff Convention, which assembled in Milledgeville in November, 1832, he measured swords with the Hon. John Forsyth in a gladiatorial contest the brilliancy and power of which will long be remembered. Six years afterwards, upon the appointment of Governor Gilmer, and in association with the Hon. W. W. Holt and the Hon. A. H. Chappell, he discussed in a masterly manner the subject of State finance as applicable to the promotion of public education and internal improvement. The elaborate report then submitted challenged and received universal attention.

On the 4th of March, 1841, Mr. Berrien resumed his seat in the Senate of the United States. To this honorable position he was re-elected by the General Assembly of Georgia in 1847, retaining it until May, 1852, when he resigned, and, in the seventy-first year of his age, laid aside the public mantle which he had so long worn conspicuously and without blemish.

It lies not within the compass of this sketch to speak of the senatorial labors of this distinguished gentleman. He was the companion of Calhoun, Clay, Webster, Forsyth, Hayne, Benton, Crittenden, Cass. Seward, Toombs, Stephens, and of many others scarcely less prominent. It was a period when this confederation could summon mighty men into the national councils. was a day of great measures fairly discussed by intellectual giants and statesmen of enlightened views. In that political arena no armor was brighter than that worn by John McPherson Berrien: no sword more deftly wielded than that drawn by the senator from Georgia. In open senate he received the thanks and the congratulations of Mr. Clay upon his famous speech maintaining the constitutionality and the expediency of the Bankrupt Law. Upon his argument upon "the right of instruction" he was complimented by Mr. Justice Story, who promised to incorporate it in the next edition of his work upon the Constitution.

But, Mr. President, we are admonished by the by-law in obedience to which this memorial is submitted, that special reference must be had to the professional career of Mr. Berrien. We therefore pretermit further reference to his political life, to his utterances on what may be styled literary occasions, and to those addresses to the citizens of Georgia, which commanded the attention they so richly merited. The reputation which he builded and defended in the esteem of judge, juryman, and professional brother, like the king's name on the field of battle, was every where and on all occasions a tower of strength. So potent was the influence he wielded at an epoch antedating the organization of the Supreme Court of Georgia, when the decision of the judge at circuit was practically a finality, that it came to be the common expectation of the community that he who secured the services of Judge Berrien would win his cause.

While in the defence of life and property, and in the support of rights confided to his assertion, Judge Berrien did not wholly sanction the suggestion of Lord Brougham, who, in the excitement of a great occasion, advanced the doctrine that an advocate in the discharge of his duty, indifferent to the alarms, the torments, the destruction he might bring to others, should know but one person in all the world and that person his client, and that to save him by all expedients, at all hazards and at every cost was the first and absolute duty of the advocate; nevertheless, when enlisted in a cause, so thoroughly did Mr. Berrien identify himself with the hopes, the dangers, and the just expectations of his client, so admirable was his preparation, so vigilant and adroit his management, and so cogent were his appeals, that nothing within the bounds of human effort, justified by conscience, was wanting to compass the victory.

Upon the passage of the Act providing for the establishment of our Supreme Court many eyes were turned upon this accomplished lawver as the jurist most competent to preside over its destinies. It was thought by not a few that he could best infuse dignity into its conduct and insure confidence in its conclusions. Echoing this sentiment, a friend communicated with him in the hope that he would permit the use of his name in connection with the chief justiceship of that court of last resort. Characteristic was Judge Berrien's response: "I would willingly have contributed my mite to the successful introduction to our people of our court for the correction of errors, if its organization had been such as to have given me hope that I could do so. That I thought impossible. Independently of the sacrifice of individual comfort in attendance upon an itinerant court for eleven months in the year, the fact that it was required, in many instances, to be held in remote places where the judges could not have access to a tolerable law library, and would probably be aided only by the local bar, was decisive against my acceptance of the office. I pretend not to say what others can do. I am quite satisfied that I could not have discharged the duties to my own satisfaction. A life spent in the study of my profession, which I have pursued with some degree of ardor, though perhaps not always with sufficient industry, has not qualified me to decide important legal questions without resort to books, and time to weigh their maxims; and I was not willing for the temptation which this office afforded to sacrifice what little of legal reputation I may have among my countrymen." Fortunately subsequent legislation has wisely remedied the evils to which Judge Berrien alluded.

At an early stage in his professional career, realizing the truth of Sir Henry Finch's assertion that sparks of all sciences are taken up in the ashes of the law; believing with Lord Coke that he who reaches deepest will behold the amiable and admirable secrets of the profession and learn to explore with delight the rough mines of hidden treasures, and persuaded that while the stammering dolt, with case in point, may gain a cause, he alone can rise to genuine greatness who comprehends the grand fact that the seat of law is "the bosom of God, and her voice the harmony of the world"; that "all things in Heaven and Earth do her homage—the very least as feeling her care, and the greatest as not exempt from her power." Mr. Berrien, by earnest endeavor, patient research, conscientious study, and calm reflection, made broad and sure those foundations upon which, during the whole course of his life, he ceased not to build wisely and well. Entering upon the study of the law with a just apprehension of the magnitude of the undertaking, he never abandoned his purpose to acquire honorable and full mastery of the profession of his choice.

Endowed by nature and education with intellectual gifts and moral traits of the highest order, he consecrated them unreservedly to a thorough preparation for, and a conscientious discharge of, the obligations which lay before him. While still a young man he was associated in the conduct of weighty causes with the most prominent members of the Savannah bar—always respected for its tone and ability—which then numbered among its practitioners such gentlemen as Davies, Noel, Harris, Stites, Cuyler, and the elder Charlton. At a later period, as junior companions, may be mentioned Wayne, Law, Nicoll, McAllister, the younger Charlton, Ward, Owens, Jackson, Lawton, Lloyd, Harden, Bartow, and others capable and conscientious.

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Prominent among his distinguishing characteristics were a uniform love of order and decorum: a tireless attention to every detail requisite for the preparation and conduct of the causes committed to his charge: a thorough mastery of the legal principles involved; a clear conception of the moral, social, and political environment of the controversy: a readiness to meet any phase or difficulty developed during the progress of the trial: a. chirography of unusual beauty; a courtesy to judge, advocate, and juror which elevated the hearing above the common level: a calm logic which carried conviction, and an accomplished oratory which charmed while it persuaded; a power of sarcasm which, when provoked, was exercised with withering effect: a demeanor which dignified the court-room and was a standing rebuke to everything having a tendency to belittle time and place. Possessing a person of marvellous symmetry, his every movement was graceful, and he never forgot the proprieties even under the greatest stress of circumstance. thought and expression, he refrained from offending his mother tongue by the use of even questionable language. Slang he utterly repudiated. He carried about him at all times and in all places an air of refinement, of self-possession, and of reserved power which, while it attracted exacted the utmost respect. Never permitting himself to become excited, he preserved his intellectual and emotional balance. Thrusts from his polished blade—"the ice-brook's temper"—were never delivered at a vent-Held in equipoise, his keen weapon was ready for parry or point as occasion demanded. In the heat of argument his eye and countenance were radiant with an intellectual luminosity which riveted the gaze and electrified the soul of the beholder. Then his attitude, his voice, his action, his eye-glasses, his pocket handkerchief, nay, his very snuff-box, were instinct with eloquence. The arts of the demagogue were by him never employed to wrest a verdict from pliant jurors. By false coloring of the law he scorned to influence the mind of the doubtful His conception of the dignity of his calling, his respect for truth and fair-dealing, and his regard for his fellow-man, suffered at his hands no such tokens of demoralization. He was in very deed a brilliant type of the thorough gentleman, the accomplished advocate, the wise counsellor, and the profound lawyer.

Believing with Judge Sharswood that, the sacred ministry excepted, there was no profession in which a high-toned morality

was so imperatively demanded as in that of the law, he so governed his walk and conversation as to convey a just conception of exalted, virtuous manhood. Fidelity to the court, fidelity to client, fidelity to the claims of truth and honor, fidelity in all the relations of life he sedulously cultivated and uniformly exhibited.

Of broad learning and scholarly attainments, Judge Berrien was not unmindful of the warning uttered by Sir Samuel Romilly, who wisely counselled his brethren that they might avoid the misery which had overtaken not a few great lawyers who, immersed in the pursuit of their profession, lost taste for literature and enjoved not the solace of books: to cultivate literary recreation and to seek liberal diversion by a well regulated course of non-professional reading. While it may not be denied that law is a jealous mistress, and while the employments of a lawver in full practice often allow small opportunity for the pursuit of science, art, and letters, it is nevertheless a manifest blunder to permit the attention to be wholly engrossed with professional inquiries and to suffer the intellect to be dwarfed by a ceaseless round of what may be termed legal drudgery. There is relief, there is expansion, there is pleasure unalloyed in the collateral pursuit of knowledge. Without neglecting the main study, one may acquire, if not reputation, at least consolation, repose, and genuine happiness in the alluring fields of literature. Absolute delight and improvement are consequent upon such robust relaxation. In her broad sweep law grasps all knowledge and renders every department of invention and learning tributary to her honor and her glory. They indulge in an error, popular perhaps, yet none the less obvious, who suppose that because lawyers excel in knowledge not strictly germane to their calling, they are therefore to be deemed amenable to the charge of having neglected their professional studies. Of all the members of the learned professions they should be the most many-sided in their acquirements. Great and active minds cannot, except under peculiar stress of circumstance, content themselves with limited lines of research and narrow spheres of intellectual employment. Hence it comes to pass that for many-earnest students, too, in the domain of the law—the happiest hours are those spent in the by-paths of science. This generous love of letters, this diversification of mental effort, this addiction to general literature, these excursions into realms. historical, poetical, and philosophical, supplementing the chief

labor and mitigating its wearisome influence, are generative alike of intellectual virility and relaxation most salutary.

How beautifully Rufus Choate records his own experience! "Let the case of a busy lawyer testify to the priceless value of the love of reading. He comes home, his temples throbbing, his nerves shattered from a trial of a week, surprised and alarmed by the charge of the judge and pale with anxiety about the verdict of the next morning, not at all satisfied with what he has done himself, though he does not see how he could have improved it. With a superhuman effort he opens his book, and in the twinkling of an eye he is looking into the full orb of Homeric or Miltonic song; or he stands in the crowd, breathless, yet swayed as forests or the sea by winds, hearing and to judge the pleadings for the crown; or the philosophy which soothed Cicero or Boethius in their afflictions, in exile, prison, and in the contemplation of death, breathes over his petty cares like the sweet south; or Pope or Horace laughs him into good humor; or he walks with Æneas and the Sibyl in the mild light of the world of the laurelled dead, and the court-house is as completely forgotten as are the dreams of a pre-Adamite life. Well may he prize the endeared charm so effectual and safe, without which the brain had long ago been chilled by paralysis or set on fire of insanity."

A fine classical scholar, an excellent historian, a lover of art and of everything appertaining to polite learning, Judge Berrien, while ever a profound and persistent student of his profession in all its branches, neglected no intellectual exercise which could impart breadth, strength, and culture to the mind. The consequence was that he acquired that loftly conception of his profession which, overleaping the narrow notion that it is mainly a congeries of arbitrary rules and promulgated precedents, elevated it into a noble and symmetrical system, based on "reason, morality and religion, elaborated by the choicest intellects which ever dignified the earth by their presence," and enriched by all knowledge beaming from the four quarters of the intellectual firmament. By severe study, professional and non-professional, he attained unto the stature of a great lawyer, and his arguments on memorable occasions are wonderful examples of mental ability, legal attainment, and liberal culture. They will take rank with the plea of Mr. Binney in the Girárd will case, or the summing up of Mr. Webster in Knapp's trial. Time and again was he heard, and with marked attention, beneath the vaulted arches of the old Supreme Court room which echoed to the eloquence of Clay, Webster, Choate, Sargent, Binney, Atherton, Kennedy, Crittenden, Phelps, and others, his companions and admirers.

To the excellencies of the advocate, the counsellor, the judge, the attorney-general, the senator, and the statesman, Mr. Berrien added the crowning virtues of an untarnished social and Christian life. His home was the dwelling place of civilization, morality, and of every attraction. There are those who still cherish in lively remembrance the refined courtesies of his residences both in Savannah and in Habersham county, the elegant table, the rare old wines, the choice cigars, and, above all, the charming converse and the genuine hospitality.

Judge Berrien was by nature what men call an aristocrat, not in any offensive signification of the term, but by reason of his love of refinement and cultivation, and his distaste for everything common and unclean. He lived in that noble period, now, alas! only a stalwart memory, when a patriarchal civilization engendered an independence of thought and action, a habit of control, a ready acknowledgment of personal responsibility, mutual confidence, and a high standard of individual honor, integrity, and manhood. Amid the changed circumstances and under the influence of the commercial methods which unfortunately dominate in such large degree the present, the type of men who then occupied prominent stations, commanded the respect and moulded the tone of communities, is fast disappearing. affable to his equals, Judge Berrien was habitually reserved. Chesterfield in deportment, he was elegant and courteous at all times and in all places; but never, "unless within the privacy of his own home, did he condescend to the free and careless mood."

Among other positions held by him may be mentioned the presidency of the Georgia Historical Society, and of the Georgia Branch of the Order of the Cincinnati. For thirty years he was an honored and influential trustee of the University of Georgia, an institution which, in 1850, complimented him with the degree of Doctor of Laws. He was also a member of the Board of Regents of the Smithsonian Institution.

A contemporary has left us this pen-portrait of Judge Berrien: "He was not a man of the people. He had none of the heartiness of Mr. Clay. He was too highly refined by his studies and by the discipline of his genius \* \* to feel a very earnest concern in the rough-and-tumble relations and contests of men, from

which he stood aloof as much as possible to seek happiness in a purer region—his own thoughts. Not that he was destitute of sympathy or benevolence: his whole life negatived such an idea. But it was only when distress was made dramatic by intensity. or by the train of sufferings associated with it—loss of reputation, the griefs of old age, the tears of childhood, the agony of bereavement, or the perils of life-that the fountains of his heart became unsealed, and the sacred tide rushed in subduing torrents. giving to his voice on such occasions more than human potency in the court-room, or in whatever forum he appeared. Berrien was the most finished orator of his day so far as the rules of art contributed to form an orator. His organs of speech were perfect. Every word and every syllable had its proper stress and intonation. There was no slurring or haste in his delivery. Smooth, grave, and musical, his voice satisfied the ear. Occasionally it was like the church organ in the depth or richness of its tones; then, with softest beauty, it would glide into the soul and take captive its emotions. Yet in all this opulence of effect there was evidently a preparation of the severest kind. is said that the great tragedian Cooper gave lessons to Mr. Berrien in early life. The orators of Great Britain, in the days of Garrick and Kemble, were glad to have private interviews with these autocrats of the stage for improvement in elecution, and Napoleon the Great was instructed by Talma, the French tragedian, in the graces of attitude becoming the imperial dignity."\*

As a member of and an office bearer in the Episcopal church, Mr. Berrien's conduct was consistent and above reproach. In the convocations of that denomination his voice and influence were potent. Between himself and that lovely priest of the Most High, and ideal type of the Southern gentleman, the Right Reverend Stephen Elliott, D. D., existed an intimacy of the closest character,

As the shadows lengthened upon his dial, while withdrawing himself from the ordinary employments of his calling, Judge Berrien still lent his great talents and rich experience to the conduct of important causes. Never did he entirely put off his armor; and, when the summons came on the first of January, eighteen hundred and fifty-six, it found him walking in the path of duty with the composure of a philosopher and the hope of a Christian.

In recognition of his distinguished public services Georgia has

<sup>\*</sup>The Bench and Bar of Georgia. Miller, Vol. 1, p. 103. Philadelphia, 1856.

his good name and brilliant career abides as a stainless column challenging the emulation and the gratitude of the profession of which he was such a conspicuous ornament.

CHARLES C. JONES, JR., Chairman. R. L. BERNER, A. R. LAWTON, JR. SAMUEL BARNETT, and FRANK H. COLLEY,

Committee.



# APPENDIX No. 9.

#### MEMORIAL OF HON JOHN T CLARKE.\*

REPORTED TO SUPREME COURT AND ORDERED PRINTED IN THE MINUTES OF THIS

The committee, appointed by this court for the purpose, beg leave to submit the following memorial commemorative of the life, character and public services of Judge John T. Clarke:

In Putman county, Georgia, the twentieth day of January, eighteen hundred and thirty-four, John Thomas Clarke was born. His father, James Clarke, was an able and well-known lawyer and large planter. His mother, Permelia Wellborn, was a sister of the Honorable Marshall J. Wellborn, distinguished as a lawyer, jurist, statesman, and, in the latter years of his life, as a zealous, devout and pious minister of the Gospel. His only brother, Hon. Marshall J. Clarke, is now judge of the Superior Courts of the Atlanta circuit. His sisters, now living in Atlanta, are Mrs. Edward E. Rawson, Mrs. Joseph P. Logan and Miss Eugenia E. Clarke. Mrs. Sidney Root and Mrs. Moses Cole, residents of the same city, passed into eternity before their brother.

When Judge Clarke was about three years of age, his father moved to Lumpkin, Georgia, and there, except when at college, the son spent the days of his youth and early manhood, under the guiding hand of a most pious mother, with all the advantages that the times and wealth could supply, and surrounded by the refining influences of a highly cultured and happy family. His whole life pulsated with the correct and pure principles that had their birth in this home. After spending the winter of 1849

<sup>\*</sup>This memorial should have appeared in last annual report. (See 7 Ga. Bar Ass'n, 143.) No manuscript or copy of this memorial, however, accompanied the report of the Memorial Committee, nor was any correction of the proof noted by the Chairman of the committee; and its omission escaped the Secretary's attention until the minutes were in type. It is, therefore, inserted here.—Secretary.

and 1850 in Columbian College, Washington City, and receiving therefrom an honorable discharge, he, in the latter year, entered Mercer University, and graduated thereform in 1853, sharing the first honor with J. W. Kilpatrick and Henry T. Wimberly. He at once commenced the study of law, at Columbus, Ga., under the instructions of his uncle, and in 1854 was admitted to the bar, and into full copartnership with Judge Wellborn in his extensive and lucrative practice. With such peculiar advantages, he was enabled to demonstrate to the public, much earlier than most young men do, that he had made good use of the very favorable circumstances that had environed him from his youth, and his fitness for the profession he had chosen.

On the second day of May, 1855, he was united in matrimony with Miss Laura F. Fort, of Stewart county, a most estimable woman who, in the words of his last will and testament, with which we heartily concur, "has loved and cherished me from her youth, been patient and affectionate under all circumstances, rejoiced with me in all my joys, lamented with me in all my sorrows, and stood heroically by me in all my conflicts and troubles." To them were born two children. One, Alice Georgia, died in childhood; the other, Wellborn F. Clarke, is a lawyer, and at this time ordinary of Stewart county. Frank A. Hooper, called in his will his "foster son," and commended to his own son as a brother, and loved by him as his own child, who was, at the request of his mother, a sister of Mrs. Clarke, taken in his early childhood and carefully reared to manhood's estate, and under his instructions prepared to practice law, pursues his profession at Americus, Ga.

Soon after his marriage, Judge Clarke settled in Lumpkin, and in copartnership with his father practiced law, taking upon himself the burden of the work, and for several years sustained himself with great credit. While thus engaged in a prosperous business, he became convinced it was his duty to preach the Gospel, and after suitable preparation he abandoned the practice, was ordained in 1858, and called to the pastoral care of the Second Baptist church of Atlanta, and took charge of the same in January, 1859. In the latter part of the year 1861, being warned by his physician, on account of loss of voice caused by throat disease, to desist from public speaking, he resigned his charge and retired to a farm in Stewart county, and until January, 1863,

led a quiet life, devoted to study and rural pursuits. He then assumed the duties of judge of the Superior Courts of the Pataula circuit, having been appointed to that office by Governor Brown, to fill the unexpired term of the Hon. Wm. C. Perkins, deceased. He was afterwards appointed and confirmed by the Senate for the succeeding term, and in the fall of 1866, elected by the people for the term commencing the first day of January, 1867. About this time he moved to Cuthbert, Ga., and was engaged in the performance of his official duties acceptably to the people, when, under the military administration of General Meade, certain orders were issued, interfering with and attempting to control the organization and conduct of the civil courts, and directing what class of persons should be drawn and serve as jurors, and when these were not obeyed, threatening the civil officers with arrest. trial by military tribunals, and imprisonment. Judge Clarke, understanding his oath of office to require of him obedience to the constitution and laws of his State, and believing that such military orders were not authorized by but contrary to both; "and that, in order to the proper administration of legal justice by the courts, it is not only absolutely necessary that judicial officers shall be left free to discharge the functions imposed upon them by law, and to interpret the constitution and laws according to their own judgment, and under the light of established precedents, uninfluenced by the hope of reward or the fear of violence; but that it should be manifest to all that the adminis tration is thus free and uncorrupted," had entered on the minutes of the Superior Court of Early county a dignified order, dated April 3d, 1868, reciting the reasons herein given, and the facts that led him so to do, and that General Meade was "in command of military power sufficient to enable him to enforce such illegal, unconstitutional, oppressive and dangerous orders and menaces," and adjourning the court "until the second Monday in June or until such time thereafter as may admit of a free and honorable discharge of the duties of said court." A similar order adjourning Miller court was passed by him; and General Meade had issued and served upon Judge Clarke an order dated the twenty-first day of April, 1868, removing him from his office. Not recognizing the authority, but yielding to the inevitable, the judge ceased to exercise the functions of his office. masses of the intelligent people of Georgia approved his course,

and in the summer of the same year he was nominated (with General, now Governor, Gordon) an elector for the State at large, and canvassed the State for Seymour and Blair.

As soon as the courts were held under the constitution of 1868. he resumed the practice of law. In 1878, he was elected to the Senate from the eleventh senatorial district, and served honorably and with great distinction in that body, and was specially useful in the orderly conducting of the impeachment trials. January 1st, 1882, having been elected by the legislature, he entered again upon the discharge of the duties of judge of the Superior Courts of the Pataula circuit, and so acceptable was he that, in the winter of 1886, without opposition, he was re-elected for the term commencing January 1st, 1887. In the very midst of a career that seemed to open up to him avenues of broader usefulness to his State, and in all the vigor of his intellectual powers, on the twenty-second day of July, 1889, while on his way to Macon, to hold court by the request of Judge Gustin, he was killed by a passenger-car in motion, under which he had accidentally fallen, and was buried the next day at Lumpkin.

Amid his professional and official work he found time to take great interest in the political, social and religious welfare of his fellow-citizens. He was for a long time a trustee of Mercer Uni versity, and was as devoted to his alma mater as ever was child to his own mother, and she returned his affection and honored him In 1856, she conferred upon him the degree of A. M., and in 1884 that of LL. D., and a few years since elected him a professor in that institution, which last trust he was unable to accept.

Through his efforts, supplemented by those of Judge Hood and others, a branch of the State University—the Southwest Georgia Agricultural College—was secured, organized and put into successful operation, and still continues to increase in usefulness. He was, for a number of years, the president of the local board of trustees, and devoted much time to the details necessary to start that institution upon its career of prosperity. Other educational enterprises of his adopted city had his good will and active support. He was always a Democrat, and while he never engaged in the small work of the politician, he was ready to advise and promote pure and correct methods of advancing the principles of his party, believing them to lead to the best policy, and conducive to good government.

That he was a true believer and follower of Christ, giving to him all the glory, and recognizing his own weaknesses and sins, we have no cause to doubt: and that his conception of the plan of salvation was clear, we take the liberty to quote from his last will and testament: "I feel permitted to place on record here some sentiments which are more precious to me than earthly riches, and which I hereby bequeath as treasures to my family. I trust that, though I am an unworthy sinner, God for the sake Christ alone has pardoned and justified me, and accepted and adopted me as one of his regenerate children, and that by his sovereign and omnipotent grace he will save me finally and forever." Following this with an expression of his firm belief that in Heaven he would be able to recognize all his loved ones, and rejoicing in the fact that the conduct of all his family gave him reason to feel that none of them will fail to meet him there, he in the most tender and affectionate manner, counsels, advises and commends each to the others in their intercourse here, and looks forward with joy to their eternal reunion. The Christian's faith: the Christian's hope. So be it.

He was small of stature, not possessed of a robust constitution. and never entirely recovered from the disease of his throat that troubled him in his early life. He, however, was noted for his cheerfulness; and having remarkable command of language and conversational powers, was very attractive and interesting. His intellectual faculties were far above the average, and his mind well-balanced. With an excellent memory, quick of perception, of acute analytical powers, well-grounded in elementary principles, with a keen sense of honesty and integrity, of elevated moral instincts, a great student, both of nature and books, he became not only highly cultured but possessed of a large fund of knowledge, and was able to draw upon it whenever occasion demanded. So thorough was his early education, or the natural orderly working of his intellectual faculties, or perhaps both, that his extemporaneous productions came forth from him as methodically arranged and clothed in as appropriate. language as the most carefully prepared essays. He quickly grasped each subject presented to him, took it in all its bearings. and in almost every instance formed a correct judgment.

As a lawyer, he was prompt to act, untiring in zeal, systematic in business, thoroughly reliable, careful in preparation, knew

every detail of fact and law of his case, and went into the courthouse fully equipped for battle, but as courteous to his opponent as a knight of old. As an advocate he presented the facts orderly. clearly and simply. The jury could not fail to understand him, and if he was unsuccessful, it was not because he did not forcibly and sometimes eloquently apply correct principles to those facts. but because of matters over which he had no control. He had neither the faculty nor the desire to use means of even doubtful propriety. He was content to leave no truth unproved, and no rule of law unpresented that was applicable to his case: but if these were insufficient for success, he would not stoop to conquer. In argument before the court, he was logical, forcible and strong and if in this he had any failing, it was that he did not take for granted that his listener knew anything. He commenced at the ground and built upward, proving and trying all the work as he When he placed the capstone on the building, he knew he was at the top and did not go over the work again. was finished. If the edifice tumbled, it was not on account of the architect: it was because of the weakness of the materials furnished him.

While he never was found wanting in any position he occupied. it was perhaps in that of judge of the Superior Courts that his. training, learning and abilities found highest development When he went on the bench the second time, from long practice and experience, close application to study and perfect self-control. he was well-fitted for judicial work; and when the record of this court shall be examined, and his standing, after the time named. as a jurist, shall be compared with others, it will be found that few were his equals. In his instructions to juries he was so systematic and clear that verdicts were rarely ever contrary to what he thought was right. If he erred, no one could doubt as to what he had decided, and the correction came the easier. Although he might differ with one as to the law, he was so courteous and kind, and so certain to recollect what was his ruling, that it was a pleasure to practice before him. Patient, dignified. learned, impartial, firm with courtesy, strict without harshness, prompt in decision, yet preferring correctness to haste, under his administration the machinery of the courts worked smoothly, justice was done, and respect for law and order increased among the people. Whether at the bar, on the bench, in the pulpit, in

society, or in the inner circle of the family, his words and acts tended to elevate those with whom he came in contact and to bless the human race. If he had faults—and who has none?—he sincerely deplored them, and they were immeasurably outweighed by the virtues that were in him and the good that came from him. The influence of the latter will live forever. A merciful God has blotted out the remembrance of the former. We cannot do less

The State has lost one of its most distinguished and useful citizens, the bar one of its brightest and most learned members, the judiciary one of its ablest coworkers, the church one of its most zealous supporters, his family a tender and affectionate brother, father and husband; and it is fitting that we pause amid the business of the court, and give some expression to our great admiration of so well-rounded a character; reflect upon the uncertainty of life, and impress upon ourselves the teachings of sonoble an example; and place upon record our estimate of his abilities and virtues, that we and those who come after us may be incited to useful, noble and virtuous actions.

## APPENDIX No. 10.

### LAW REFORM AND CHANGES.

A PAPER READ BY HON. J. M. MOBLEY,

BEFORE THE RIGHTH ANNUAL MEETING OF THE GEORGIA BAR ASSOCIATION, AT COLUMBUS, MAY 20, 1891.

#### Mr. President and Gentlemen of the Georgia Bar Association:

In the note of my friend and brother, Chappell, requesting me in behalf of his committee to read a paper to this Association. I was reminded that the essays were expected to be read in twenty or thirty minutes, which is certainly proper and in keeping with the style of the present fast age of doing business in double quick time, as illustrated a short while ago in this place by Judge J. H. Guerry in the trial of a criminal case, to which I gave close attention, it being the first I had seen of the administration of this young and able judge. The case was called, the prisoner charged with carrying concealed weapons. Preliminary motions were made, discussed and disposed of: a jury impanelled; witnesses sworn on both sides and examined; legal points, made in regard to the admissibility of the testimony, argued and decided. Then the prisoner made his statement at length. Next the case was argued well by Solicitor Carson for the State and Hon G. Y. Tigner for the defence. After this the judge gave a full, comprehensive charge to the jury, embracing all the points in the case. The jury retired, gave the case due consideration and returned with a verdict of guilty. Whereupon the judge directed the prisoner to stand up and hear his sentence, which was pronounced in a solemn and impressive manner, and immediately another case was called. All of which was well done in twenty or thirty minutes—the time allowed for our essays. It will hardly be expected that our work will be done so well in that time, as an essay on any subject, especially a legal one, would require previous study and preparation in the examination of the productions of the many authors and law writers of ancient and modern times, so often referred to and cited in the cases adjudicated in our various courts by eminent lawyers. The short notice given me for this preparation, and other engagements, I trust, will be sufficient apology for any defects, which I hope will not be harshly criticized by my generous, liberal-minded brethren, whose first lessons in Sir William Blackstone's Commentaries reminded them that after they had spent twenty years in close study, day and night, instead of the twenty or thirty minutes, they had just then commenced fairly their great pursuit of mastering and obtaining a perfect knowledge of the various branches of the law. But I must hasten and close this introduction, or it might be said of it, as my distinguished friend, Judge Blandford, said of a long introduction to the the speech of a distinguished lawyer, "The porch is larger than the house"

I will therefore proceed and notice briefly some of the

#### LAW REFORMS AND CHANGES.

The great evils to the public resulting from inconsiderate alterations of the law are too obvious to need discussion, and yet it might be interesting to notice how the venerable works of antiquity have been changed by rash, inexperienced men under the rage of modern improvement. It is true some changes have been absolutely necessary for the public good. We should have but few laws; enough only for the protection of person, property, character and the pursuits of happiness, and never changed except to meet the shifting events and emergencies which may arise in the development of the diversified interests of the people during the lapse of years.

We might profitably trace the material changes of the law as handed down to us from England during the past centuries if we had time to do so, but for want of time, if for no other reason, we are content in presenting only a few.

### OUR JUDICIARY SYSTEM OF 1799,

which abolished special pleading in Georgia, was a great change, and by many considered an improvement and saving of much

close study, labor and time. Some have contended that the old special pleading was the most perfect system of reaching the final issues of the case, and have recommended those lawvers and judges who desired to become eminent in their profession to follow the reason and logic, as they called it, of a special pleader: and some have continued its study since as well as before it was Many assert that where special pleading is required. are to be found the best informed judges and lawyers. Whether this be true or not I do not pretend to say. I have heard it said that much of the legal ability of our worthy Chief Justice Blecklev is due to his close, diligent study of the works of our best authors on special pleadings, in which he so much delighted in his earlier days, though I think he now favors shorter methods. In order still further to reform and simplify pleading, the Legislature of 1847 passed an Act prescribing what is known as Jack Jones' short forms of action. Many lawyers had a very poor opinion of it at first, but now it is generally approved and used, not only in our own State, but other States of the Union, and will remain in our Code a lasting monument to the memory of its author and to the credit of the State. We should be proud of our judiciary system, although, like all things human, it may have its defects, still to be remedied by time and the experience of those who are to follow in the search for truth, wisdom and iustice.

After some preparation for these remarks I had the pleasure of reading in the Atlanta Constitution an article written by my esteemed and worthy friend, Hon. Richard H. Clark, one of the purest and ablest judges of the State, reviewing the production of my old, distinguished friend, Col. Richard Malcolm Johnston, "as to the authorship of Georgia's 'First Judiciary System,'" meaning what is commonly called "Judiciary Act of 1799," in which he says, "Col. Johnston is inclined to ascribe its authorship to Abram Baldwin, who was afterwards elected to the United States Senate: "whilst Judge Clark and others have searched the records and still consider the authorship in doubt and it lies between Baldwin and Wm. Stith, Sr., and Wm. Stith, Jr., Judge Clark decides that the weight of the evidence is in favor of Wm. Stith, Jr., and gives a sketch of his life and Baldwin's also. He states that the real first change was in 1797 and that Stith was the author of that Act, and the Act of 1798 was

only amendatory of that Act. It would perhaps be interesting to some to pursue this discussion farther, but my limited time admonishes me to desist, after adding the following extract from this excellent article of Judge Clark: "Georgia, the youngest of the original thirteen States, has taken the lead in judicial reform, and her lead has been followed both in England and the United States. Indeed, the example of Georgia was first followed by the Parliament of Great Britain."

Amendments may now be made, under the different changes of the law, at any stage of the case, even after it is submitted to the jury, under the charge of the court, while considering the form of their verdict, at any time, before it is rendered, and this in any form, from the general issue to an equitable defence in the nature of a bill in equity. Is this right and proper? Or should there be legislation on the subject, and, if any, what shall it be? Some may be in favor of leaving all amendments to the sound discretion of the judge presiding, under the peculiar circumstances, of each case, throwing open wide the doors of his dis-Even this, with a competent, honest judge, might be better than a bad, firmly-fixed rule of law, as an exception to the great principle laid down by a distinguished law writer, "Law without equity, though it may be harsh, is more desirable for the public good than equity without law." This might furnish a fruitful theme for some of our distinguished brethren, who have shown their ability for writing essays heretofore, by giving full sweep at all the discretionary powers of the judge; especially as a chancellor in equity cases, which depend essentially on the facts and circumstances of each individual case, where there can be no established rules and fixed precepts of equity laid down, without destroying its very essence, and reducing it to a positive law, and at the same time remembering that "the liberty and discretion of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question to the breast of the judge."

#### IN REGARD TO TESTIMONY.

Another great change was made by the Act of 1866, which provides that "No person offered as a witness shall be excluded from giving evidence on account of interest or from being a party, with some exceptions, one being where one of the original

parties to the contract or cause of action in issue on trial is dead or insane, or where an executor or administrator is a party in a suit on a contract of his testator or intestate, the other party shall not be allowed to testify in his own favor."

Whilst this, as well as the provision allowing the prisoner in criminal cases to make his statement to the jury, and the jury allowed to consider it in forming their verdict is all highly approved by our wisest and best men, yet there has been much legislation and adjudication in regard to the proper construction of this section of the Act, and still perplexing questions arise, even since the amendments of 1889 and 1890, and another amendment is necessary to settle what testimony should be admissible under this Act, which can be easily made by so amending the Act "that all these excepted classes can testify, but require corroborating testimony where the other party is dead, to authorize a verdict or judgment of the court." This would meet the difficulties confronted, especially in cases of partners, where one is dead and it is difficult to tell with which one the contract or transaction occurred. This is similar to Lord Denman's Act and the Amendatory Statutes of England on this subject, which makes no exception where one party is dead, but in such cases the courts have held that no decree can be sustained on such evidence unless corroborated. This would avoid a great many disputes and difficulties, and it seems the better subserve the great ends of justice, in the trial of cases. It is to be hoped that the attention of our Legislature may be called to the necessity of this amendment, although frequent changes should be avoided as much as possible, as already stated. This as it stands now, is certainly an improvement and reform on the old law, for then under it, the nearest approach to this kind of testimony was by bill for discovery in equity, and discoveries at law under certain prescribed conditions and circumstances, to which the lawyers of those days clung with great tenacity. I merely mention in this connection that once negroes could only testify for and against each other; now they are competent in all cases. This is another great change in regard to testimony, and only mentioned without comment to show one of the many changes.

Taxation has always called forth much discussion and legislation, and there have been many changes of the law in regard to it, the most prominent of all being the adoption of the ad valorem

system in 1851, the justice and equity of which needs no vindication; and yet soon after the passage of the Act, a great hue and cry was raised against it, and those members of the Legislature Especially was this opposition severe by the who favored it. farmers, who were mostly benefited by it, numbers of the most prominent of whom were so bitterly opposed to it, that they declared that it was the work of lawyers, and they were ready to take up arms to prevent its execution, and asserted that no man should be returned as a member of the Legislature who favored it. I was then a member of the Legislature and did all I could in favor of this system of taxation, for which I was severely criticized, and my constituents proclaimed that I should never represent the county again: upon which I very soon announced myself a candidate, and upon all convenient occasions proceeded to explain the just and correct principles of this system, and was re-elected by an overwhelming majority. Some of those who were the most bitter in their opposition became warm supporters of the system.

This was certainly another great reform as well as a great change, and it will be a long time, if ever, before it will be abandoned for any other system. Under our organic law, no tax can be levied and collected except for the support of the government and its public institutions, and for the aid of our disabled Confederate soldiers, and widows of those who died in the service or since from disease or wounds caused by such service. It is well that the Legislature is thus restricted, for the people should not be burthened with taxation, except for the support of an economical administration of the government as thus provided; then no just and true man will have cause to complain. Generally such complaints come from those who have little or no taxes to pay.

#### THE ABOLITION OF SLAVERY

caused a great change in our judicial proceedings as well as our social system. Before it was abolished we had much litigation as well as legislation about the title, ownership, sale and treatment of slaves. Whilst this has all passed away forever, we are yet in the midst of the solution of this great problem, the abolition of slavery. Who can tell the final result? The establishment of *The Supreme Court* is another one of the greatest changes,



which I only have time to mention. Most of the men who were conspicuous in these changes have finished their work on earth and gone to the Higher Court above—Walter T. Colquit, Joseph Henry Lumpkin, Nesbit, Toombs, Stephens, Hill, Warner, Crawford, Chappell, Thomas, Worrell, Benning, and a host of others, known of all equally as well as those named, some of whose matchless eloquence was equal to any of the orators and advocates of this or any other age or country. Long may their memory be perpetuated.

During the same session of the Legislature of 1851 another great law reform was introduced and advocated by Hon. Andrew J. Miller, of Augusta, known as

### THE WOMAN'S LAW.

This secured to married women their own property acquired by gift, purchase, or their own labor, free from the debts or liabilities of their husbands. The bill was not passed at that session, but again introduced at the next and from year to year, with the passage of some Acts tending in that direction, such as exempting the property of the wife from the debts of the husband, created before marriage, until 1866, when it was passed with all the provisions of the bill of Andrew J. Miller. When it was first introduced, in 1851, I had the honor of being a member of the Legislature, and did not favor its passage, believing, with many others, that it was in opposition to the great declaration in the Bible that husband and wife were one, no longer twain, one flesh and one property, and that a division of the property might cause a division of sentiment and affection, resulting in disputes and trouble. The eloquent argument of the able author of the bill, with a little more experience and observation, satisfied myself as well as others that it was right. At the next session, of which I was also a member, I advocated it with as much zeal, if not ability, as Mr. Miller. Ever since it was enacted our judges and courts have upheld and sustained the law in letter and spirit in all cases where attempts have been made to subject the property of the wife to the debts of the husband, even by her own deed and contract.

This has saved from suffering and distress many unfortunate women and their children throughout the length and breadth of the State, who received a little patrimony from relatives or acquired property by their own labor, and the name of Andrew J. Miller will be held in grateful remembrance and transmitted to posterity as a common benefactor. The people are generally satisfied with this law reform, and we may expect no change, unless it be to give the women still greater protection in their just and honest rights of separate property, and of holding separate estates free from the mistakes, foibles and misfortunes of their husbands, and to encourage and strengthen them in their industrious pursuits in the great battle and struggle of life. There has been much legislation and litigation on this subject, but no backward steps have been taken. All have been forward, and time and experience have proven the wisdom of protecting the rights of married women.

The Ordinary Court during the same Legislature of 1851, was carved out of the old Inferior Courtof five judges, leaving it with the same jurisdiction and powers, except those conferred upon the ordinary, such as jurisdiction over estates of deceased persons. appointment of administrators, executors, guardians, etc., which before then was under the jurisdiction of the Inferior Court. which transacted the most of this business of the court through the clerk, who received the fees; which was continued for years, and considered a very useful court, until after the late war it was abolished, and a county, monthly, and semi-annual court was organized, which existed only a short time, and another district court established, embracing the senatorial districts of the State. as the jurisdiction of each judge, who was appointed by the Governor. Soon this court was also abolished and none created in lieu of it. except in a few counties, where county and city courts have been created by special local acts of the Legislature. Whether all these changes have been beneficial reforms of the law or not, is a question of doubt upon which much might be said. Those who were familiar with the old Inferior Court, I think, will agree with me in the opinion that it was a good useful court, especially its jurisdiction over certain civil and criminal cases, that could be adjudicated as well in that court as the Superior Court, and thereby be a saving of time, expense and delay. The five judges were elected from among the best citizens and most intelligent, worthy, upright, just, competent men. Many of its judges would have made acceptable judges of the Superior Courts, and some were lawyers of fine character and reputation. Cases were tried patiently; generally the parties were satisfied, but if any mistakes were made, they could be corrected by an appeal to the Superior Court, without the expense of carrying it to the Supreme Court.

Members of the bar who practiced in that good old court, in the good old ante bellum days, will remember as long as they live, interesting and thrilling scenes and occurrences, during the sessions of this court; one of which I will beg now to relate. It occurred during the semi-annual session of the Inferior Court of Harris county, in the month of July, years before the late war. There was much important litigation before the court, and a full bar of fine lawyers, including the late Hon, M. J. Crawford and John L., the brother of A. H. Stephens, deceased, who were present, and perhaps Hon. M. H. Blandford, who practiced there about that time, might have been present. The leading lawyers of the court were Col. Wm. B. Prvor and Hon. Porter Ingram, who is still living in Columbus, enjoying a good practice, and who has won for himself a fine reputation as a lawver and a worthy gentleman. The weather was very hot, and the judges, lawvers and jury, wet with perspiration, which flowed freely down their These champion lawvers. Prvor on the one side, and Ingram on the other, had been tilting at each other all day, on closely contested questions, Col. Ingram getting rather the better of the argument, until it culminated in a fight: for a few moments everything went wild with confusion, books, tables, chairs and inkstands, were being used freely, and flying in every direction—the court and sheriff crying "Order," "Order," "I command the peace," Arrest the parties," while the combatants were using very impressive language and gesticulations at each other. Soon. however, the other members of the bar succeeded in quieting everything, and both parties made friends. The court directed the clerk, however, to enter up a fine of fifty dollars on each of the combatants for contempt of court. "Stop, may it please your honor," said Col. Ingram; "I was only acting in self-defence, no injury has been done, except to myself, in receiving the blow from the inkstand, the contents of which, as you see, have ruined my fancy colored new summer coat; besides, my dear judges, we are hard up for money just now, and in a bad fix generally. Furthermore, may it please your honors, I never did in all my life entertain the least contempt for this honorable court;

respect for the court; yea, more, great admiration; yea, still more, your honors, it is real genuine love and affection; and still more, please your honors, Col. Pryor and I are now on the most friendly terms, and he concurs in all I have said." This is only the substance of this eloquent speech, for no man can ever speak it or write it as he did. Of course the fine was immediately remitted, and they went on with the case as if nothing of the kind had ever happened. Oh, some of those days of vore, not withstanding all this, were glorious times, but of which there will soon be no living witnesses. Amid the great changes of the future, who knows but that this court or something like it. may be established; and also appeals to a special jury, to be composed of such men as served in that capacity before the war, many of whom were competent and worthy to fill any office in any of the departments of the State. And cases tried before them, after a trial before a petty jury, would be well done and generally to the satisfaction of both parties, and the mistakes of the first corrected without carrying it to the Supreme Court, which would greatly relieve these now overburdened and hard worked judges of that court, if we had appeals to special juries now as we did then. The constitution authorizes the General Assembly to provide for an appeal from one jury to another in the Superior and city courts, but none has as yet been provided. This is another subject worthy of consideration.

# USURY AND THE INTEREST FOR THE LOAN OF MONEY

has been the subject of much legislation. Once a penalty was annexed to usury. Next it was no crime, but the debt forfeited. Later on nothing but the interest was forfeited; and then nothing but the unlawful interest. And at one time since the war, all the usury laws repealed and any amount agreed on was lawful. It was not long before this was repealed and interest limited to eight per cent. by contract and seven without contract; and if more is agreed on, nothing but the excessive unlawful interest is forfeited, and all titles made as a part of a usurious contract, or to evade the laws against usury, are void.

It has been the policy of all civil governments to limit the rate of interest for the loan of money, to protect the weak against deceptive hopes, when in distress, of relief from the loan of money



to pay debts, and sometimes for speculation. And yet some good men favor the repeal again of all usury laws, and the enforcement of contracts for any rate of interest, but the present law seems to be generally approved and has been of force several years, and will likely remain the law for years to come.

#### COMMON LAW AND EQUITY

has been greatly changed, though it is the perfection of reason founded in justice and truth as taught by our immortal law writers, Blackstone and others. When this domain is invaded by legislation, all else must vield to its commands, whether good or bad. No discretionary powers of an honest, competent judge can then be applied to the peculiar facts arising in each separate The rights and safety of the people depend greatly upon its correct administration by competent, upright men, who are to construe and decide upon the facts. Our judges have wide discretionary powers, and are never reversed by our Supreme Court in the exercise of this discretion, except when it is grossly abused. Hence the importance of not only having good lawyers as judges, but pure, impartial men with well-balanced minds free from prejudice or passion. Judges and lawvers will come and go, live and die, but truth as developed in the common law will live forever and can never die. It is true, new questions will arise under new facts, but they may all be settled by these fundamental principles of the common law, if not interfered with by statute. And therefore, changes should only be made to meet the changing interests and developments of the people.

#### THE BLENDING OF LAW AND EQUITY

has been a subject of legislation for years. Much difficulty has arisen from it which has occupied the close study of eminent lawyers, and it is still doubtful whether the act of 1887 sufficiently provides for these difficulties.

Now, the judge can change to a Chancellor in Equity and then back to a judge, in the twinkling of an eye. Time may demonstrate this a great reform, but as yet it is a matter to be tested. Our safety, in the enjoyment of our rights of person and property, against unforeseen emergencies, and for which no provision of law is made, depends in a great measure in the powers of a Court of Chancery vested in a competent, just and upright chan-

cellor, and cannot be dispensed with; it is an absolute necessity, and will be, so long as all human laws are imperfect. If the blending of law and equity together increases the scope and benefits of a Court of Equity, then it might be considered a reform; if otherwise, then it is a question of doubt. Much might be said on this subject; it is a fruitful, important theme, which I hope will have proper future consideration, resulting in great good to the people as well as to our profession.

#### OUR HOMESTEAD LAWS

have undergone many changes. Soon after the war, from a very small amount it was raised to \$3,000. Under the Constitution of 1877, through the championship of the great jurist, statesman and patriot, Robert Toombs, it was fixed at \$1,600, where it still remains, generally approved, though much litigation has grown out of the varied interests connected with the right of homesteads, their liabilities, liens, transfers, limitations, etc., which has given the Supreme Court much trouble; and there seems to be no prospect of an end to it, unless some remedy can be suggested by our best informed brethren of the bar familiar with the subject, who would be considered benefactors in doing so, and thereby prevent much future litigation and strife which will necessarily occur after the termination of the existing homesteads. The weak and helpless should be protected and provided for as far as possible, and no class of persons knows so well as the lawyers how this can be best accomplished, and none possess more patriotism and philanthropy. Therefore this subject appeals to them. and almost to them alone, for whatever changes and enactments of law that may be necessary.

#### THE VENDOR'S LIEN.

for the purchase money of land, was abolished by the adoption of our Code, twenty years ago, although it had always existed before then, and was generally approved, and is so now. Good reasons might be given for its restoration, and some against it, but we must leave its discussion for others and other occasions.

# IMPRISONMENT FOR DEBT,

as well as whipping for crime, which once existed, was unpopular long before it was abolished, and was considered a relic of barbarism, although it continued so long. In some States it still



exists in some form. Some are in favor of still having stringent laws for the collection of debts. Before the late war the plaintiff had the right to have either an execution against the property by fieri facias, or against the body by a capias ad satisfaciendum, for the collection of a simple debt—"a pound of flesh or the money."

So few favor the latter that discussion or fears on the subject are not necessary. On this subject all will agree that there has been a great reform in our laws, and the wonder is that it was not sooner made.

LAW REGULATING THE MANUFACTURE AND SALE OF INTOXICATING LIQUORS

has had many changes, and there has been wide discussion as to its propriety, and there has been much litigation thereon. Strong arguments have been made against it, on the ground that it was repugnant to the personal rights of men to manufacture, buy and sell what they pleased, and was in conflict with our organic law securing these rights. This question has been tested by the combined wisdom and skill of our most eminent lawyers, before all the courts, from the lowest to the highest, and it is now well settled that the State has not only the right to restrict, but to prohibit.

A large majority of the towns and counties have, under the laws of the State, adopted prohibitory laws against this great evil; an evil none ever disputed, though for a long time some of our best men honestly believed moral suasion the best remedy, and that any other plan was an invasion upon the natural inalienable rights of persons. The argument of learned judges and good men, with the sad and heart-rending scenes of suffering humanity from the evil effects of this monster within the last decades, have beyond dispute settled these questions forever.

This has certainly been a great change and reform of the law since the memorable excitement fifty years ago, caused by a memorial to the Legislature to suppress this evil, under the leadership of Josiah Flournoy, who boldly canvassed the State, and with zeal and eloquence appealed to the people to come to the rescue. His labors were not in vain.

#### OUR MILITARY LAWS

have been greatly changed, almost entirely abolished. Though this might be vindicated by the change of times, much could be

said in favor of our old military system, its company, battalion, regimental, brigade and division musters and the Governor's general reviews, with his staff, and all the officers in the other commands, in splendid uniform, and the men with old firearms and cartridge pouches, as they drilled and held courts of inquiry for about fifteen days in the year. It is wonderful how much all were interested and improved in tactics and military discipline. In the late war the Georgia militia took a conspicuous place and did good service, winning for themselves great fame and honor. Before the war regimental musters and the Governor's general reviews were grand occasions, when the numerous drums and fifes were playing with wild enthusiasm "Yankee Doodle," "Smith's March" or "Haste to the Wedding," and men charging around with fine, well equipped horses, crying with a strong, loud voice, "Fall in, fall in, form a line," and so on through all the organizations, manual of arms and evolutions to the end of the grand parade. Yes, these were exciting, memorable old times, but of which soon there will not be left a single living witness. And all that remains of this system now are a few volunteer companies under the control of an advisory board. This may be a reformation and improvement. It is certainly a very great change.

The changes in our State Organic Law have been generally approved, especially in the declaration of rights and protection against unjust monopolies and rail combinations, as provided in the Constitution of 1877, under the leadership of the great Robert Toombs and others. Also, that which requires a majority of the whole Legislature to pass a bill; also, the limit to taxation by municipalities as well as the State, and the limit to donations: also, the power of the Legislature to blend law and equity, and many other important changes, as has been referred to, which are fixed in the Constitution of 1877. It was predicted that the provision in the Constitution for the establishment of a Railroad Commission, if adopted, would ruin the commercial interest of the State, cripple the old railroads, and prevent the building of new ones. Such has not been the case, but the reverse is true. Many States have followed the example of Georgia; and now this provision in the Constitution, which was so ably argued and defended by our lamented Governor Smith, the first Chairman of the Railroad Commission, is generally approved. I only refer to t, to show what changes have occurred in the past few years,

and, therefore, we may not be surprised at what may occur in the future, whilst certain fundamental principles of law and equity will be the same forever. In noticing the changes of the law, many regulating rights and remedies have been necessarily omitted, especially some which are considered small and yet of considerable importance. These little changes of the law, cause no little trouble and often loss, and must be closely watched to preserve our rights. They often cause complaint, to which it may be replied, "eternal vigilance is the only price of safety," as well as success.

One of the greatest changes has been in our system of public education, which would be a theme of itself sufficient for an address. This subject is occupying the attention of our wisest and best men throughout the length and breadth of the State, and it is to be hoped that a satisfactory solution of the many points connected with it may soon be reached. Before the war, it was a crime to teach a negro to read and write; now, under the laws of the State, it is not only allowed and encouraged, but hundreds of thousands of dollars of the money of the white people is annually expended for the education of the negroes. What a wonderful change. Who can tell what may occur in the next quarter of a century?

Changes in our national affairs have been also omitted, yet it would have been interesting to notice some of them, especially an unjust tariff, but I must close.

These changes in our State, which have been noticed, are only a few of the many that have been made. From this what are we to expect in the next decade? And what will these changes be? Who are to meet them? In conclusion, let me urge all to be prepared to meet any emergency that may threaten our fundamental rights. Especially is the responsibility great on members of the bar, whose lives have been spent in search after truth, justice and equal rights, of person and property. Stand firm and contend manfully for the preservation of the ancient landmarks of the liberty and rights of an American citizen, in a Democratic government, planted in our judiciary by the wisdom and patriotism of our forefathers, and thus transmit it to our children's children unimpaired. Young men, the greatest responsibility is upon you! Patriotism, as well as self-preservation, calls to duty. On to the rescue! On, and may the God of your fathers go with you, to guide, protect, bless and save you.

# APPNDIX No. 11.

# REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

SUBMITTED ORALLY BY HON. GEO. A. MERCER, CHAIRMAN.

Mr. President and Gentlemen of the Association:

I regret very much, for reasons which I will explain, that the committee has no written report to submit. The statement that I make is really my own statement as Chairman, and not the formal report of the committee. Your present President appointed as a Committee on Jurisprudence and Law Reform, J. C. C. Black, Augusta; J. W. Parks, Greeneville; T. P. Westmoreland, Atlanta; W. H. Dabney, Rome; and myself as Chairman.

At the last annual meeting of the Association, there were two matters referred to this committee. The first reference is to be found on page 23 of the published proceedings. At that meeting, Mr. McCord, of Augusta, made the following statement:

"Mr. President, will you permit me to stop the progress of the Association for a moment. The report of Mr. Miller, under the adoption of it by the Association, upon motion of Judge Blecklev, means nothing more nor less than the adoption of the I desire to go one step further than that, with the consent and approval of this Association. I am not sure to what committee the recommendations ought to be committed. It might be that a bill in the nature of an amendment to that bank section of the Code, allowing the remedies to all these corporations, might be made, or in the nature of an original bill in conformity with the admirable views of the author of that paper; but I should like, if it is proper, for the Executive Committee, or the Committee on Jurisprudence and Law Reforms-my friend, Mr. Thomas, says the Committee on Jurisprudence and Law Reforms-I would like to move a reference of that paper to that committee, looking to bring it before the Legislature.

Mr. Thomas: Mr. President, I offer an amendment that Mr. Miller be requested to prepare a bill, or bills, embodying the suggestions of his address, and that he hand it to this Committee on Jurisprudence and Law Reform.

Mr. McCord: I accept the amendment.

The President put the motion of Mr. McCord as amended, which was carried.

In accordance, gentlemen, with that resolution, I wrote a circular letter to the gentlemen of the committee upon the several subjects referred to the committee, and this is the portion of the letter which refers to the bill to be prepared by Mr. Miller and handed to the committee:

"At the last meeting of the Association a resolution was adopted that Mr. Frank H. Miller, the present President, prepare a bill embodying the suggestions of his address, and that he hand it to our committee. See report of seventh annual meeting, pages 23, 24.

"Is it your understanding that it devolves upon our committee to approve or disapprove the provisions of this bill, or to suggest changes in it, or that we simply present it to the Association as handed to us by Mr. Miller? Have you received a copy of the bill from Mr. Miller, and if you think it is the duty of our committee to pass upon its provisions, will you kindly put me in possession of your views?"

Now, in response to that request from me, the only member of that committee who replied to that question was Mr. Parks, of Greeneville. It was his opinion that the committee should give its opinion upon the bill. Mr. Black, of Augusta, was neutral, and gave no opinion upon the subject. Mr. Dabney, of Rome, gave no opinion upon the subject, and from Mr. T. P. Westmoreland, of Atlanta, I received no reply at all. Under those circumstances the committee has no view to express upon that bill; and I think it is my duty simply to read that bill to the Association, and let them take such action as they think proper. The following is the bill:

An Act to provide for the judicial forfeiture and dissolution of corporations created by and existing under the laws of this State; to regulate the mode of procedure; and for other purposes.

SECTION 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the authority of the same, That from and after the passage of this Act an action to procure a judgment of forfeiture

of the charter, corporate rights, privileges and franchises of any corporation created by or existing under the laws of this State, and decreeing a dissolution thereof, may be maintained in the Superior Courts of this State upon the following grounds:

a. Where a judgment has been rendered against a corporation

and it has remained unpaid or superseded for thirty days.

b. Where the corporation has neglected or refused for at least thirty days to pay or discharge its bonds, bills, notes or other indebtedness.

c. Where it has suspended its ordinary and lawful business for at least thirty days.

d. Where it has engaged in any business or done any act not

authorized by its charter or the laws of this State.

e. Where it has, by combination with other corporations or individuals, suppressed or attempted to suppress competition in any business, or engrossed or cornered, or attempted to engross or corner, the market in any commodity or personal property.

f. Where the majority of its stock stands or has been allowed to stand on its books in the name of a foreign corporation, or State non-resident Joint Stock Association or Board of Trustees, by the vote of which stock, in a regular or called convention of stockholders, a Board of Directors has been elected, which Board, subsequent to their election, have gone beyond the limits of the State and there entered into or ratified a contract which, if made in Georgia, would be in violation of the laws or public policy of this State.

g. Where the whole or a majority of the capital stock has been placed in the name of a resident or non-resident corporation or trustee and held as part of a pool, trust or organization of any kind, effecting or tending to effect a combination or conspiracy in restraint of trade or commerce, or obtaining the sole exercise over or control of any other corporation, or of any trade, occupation or business, for the purpose of regulating the price of the article or commodity.

h. Where it has entered into in this State a contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign

nations.

i. Where it has violated the essential conditions upon which the charter was granted or has violated the policy of this State as laid down in her constitution or laws pursuant thereto, or the Acts of Congress passed in pursuance of the constitution of the United States.

j. Where, from mis-user or non-user of the corporate franchises or otherwise, the business of the corporation is carried on at a manifest loss and a majority of the stockholders in convention assembled shall by resolution direct that the corporation shall be dissolved, the business wound up and its assets distributed among the stockholders after paying its debts.

action specified in section 1 of this Act may be mai the name of the State, by the solicitor-general of th which the county wherein the corporation has its prin or place of doing business is a part, when chartered by legislature or under general laws by virtue of the artisociation filed with the secretary of State, or by order perior Courts: and whenever a creditor or stockhol corporation submits to said solicitor-general, a written of the facts verified by oath, showing the grounds fo arising under the provisions of the first section of thi ceedings shall be instituted by the said solicitor-ger next term of the Superior Court, and if said office thirty days after the receipt of this statement to comm an action as is specified in the first section hereof, then otherwise, such creditor or stockholder of the corpor apply to the judge of the Superior Court of said cou the principal office or place of doing business of the c is located for his sanction to commence such an action sanction may be given by the said judge either in ter vacation. That upon obtaining the same, such credito holder shall be authorized in the name of the State, to and maintain the action to the next term of the Supe for said county, and if said corporation shall have bee rated in one county and have its principal office or pl ing business in another, then the said action may be and maintained in either county.

Sec. 3. Be it further enacted by the authority aforesaid any action brought as prescribed under sections 1 and : Act, the judge of the Superior Court may, upon proof o authorizing the action to be maintained, either in terms vacation, grant an order restraining the corporation, it directors, managers and other officers from collecting or any debt, dues and demands, and from paying out, way transferring to any person, any money or proper corporation during the pendency of the action, exce press permission of the court; and where the action is for the dissolution of the corporation, the injunction restrain the corporation and its trustees, directors, man other officers from exercising any of its privileges, rights or franchises during the pendency of the action  $\epsilon$ express permission of the court. That in such an all court may also, at any stage thereof, appoint one or mor ers of the property of the corporation, which received either temporary or permanent.

Such receivers may be empowered to collect and redebts, demands and property of the corporation; to preproperty and other proceeds of the debts and demands a to sell or otherwise dispose of the property, as directed

court, and to maintain any action or special proceeding for

either of those purposes.

Said receiver must give such bond as may be prescribed by the court in the order of his appointment or subsequently and shall be subject at all times to the control of the court, and shall not make any distribution among the creditors or stockholders of any of the assets which may come into his hands before final judgment and decree, unless he is specially directed so to do by the court appointing him.

Sec. 4. Be it further enacted by the authority aforesaid, That where the action is brought by a creditor of the corporation, and the stockholders, directors, trustees or other officers or any of them are made liable by law in any event or contingency for the payment of the debt due such creditor, the persons so made liable may be made parties defendant by the original or by an amendment in the nature of a supplemental petition, and their liability may be declared and enforced by the judgment in the action.

Sec. 5. Be it further enacted by the authority aforesaid, That where the stockholders, directors, trustees or other officers of a corporation who are liable in any event or contingency for the payment of a debt, and are not made parties defendant as prescribed in the preceding section, the plaintiff in the action may maintain a separate action against them to procure a judgment declaring,

apportioning and enforcing their liability.

SEC. 6. Be it further enacted by the authority aforesaid. That in an action brought as aforesaid and against stockholders, directors trustees and other officers, the court must, when it is necessary, cause an account to be first taken of the property and of the debts of the corporation and apply the assets to the payment of its debts, if it is solvent, or as far as they will go if insolvent, but if it affirmatively appears that the corporation is insolvent; and has not sufficient property to satisfy its creditors, the court may, without taking such an account, ascertain and determine in the first instance the amount of each defendant's liability, and enforce the same accordingly.

Sec. 7. Be it further enacted by the authority aforesaid, That a final judgment in an action brought against a corporation as prescribed in this Act, either separately or in conjunction with its stockholders, directors, trustees or other officers, must provide for a just and fair distribution of the property of the corporation and the proceeds thereof among its creditors in the order and priority prescribed by law in case of a voluntary dissolution

of a corporation.

SEC. 8. Be it further enacted by the authority aforesaid, That where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid on the shares of stock held by him, or



ration and cost and expenses of the action.

In case the stockholders are not parties such decree shall be a legal call in the same manner and to the same extent as if made by the directors, and shall be enforced against them either by direct action or amendment to the original action by the receiver, if any has been appointed by the court; if not, then by the plaintiff, in order to collect the same and enforce payment in accordance with the terms of the decree.

Sec. 9. Be it further enacted by the authority aforesaid. That if it appears that the property of the corporation and the sums collected or, collectible, from the stockholders upon their subscriptions, are, or will be, insufficient to pay the debts of the corporation, the court must ascertain the several sums for which the directors, trustees or other officers, or the stockholders of the corporation being parties to the action, are liable, and must adjudge that the same be paid into court, to be applied in such proportions and in such way as justice requires, to the payment of the debts of the corporation.

SEC. 10. Be ût further enacted by the authority aforesaid, That nothing herein contained shall be held to repeal or affect any special provision of law prescribing that any particular kind of corporation shall cease to exist, or shall be dissolved in a case or in a manner not prescribed in this Act, or any special provision of law prescribing the mode of enforcing the liability of the stock-

holders of a particular kind of corporation.

SEC. 11. Be it further enacted by the authority aforesaid, That all laws or parts of laws militating against this Act be, and the same are, hereby repealed.

Not having the consensus of all the committee on the subject, all I can do is to submit it to the Association.

There is another matter referred to the committee of which I am Chairman. At our last meeting Mr. Hill made the following statement:

"This is really the only matter in the report that I care now to press upon the attention of the Association, and, speaking for the committee, I would be glad for this body to recommend that the Committee on Jurisprudence and Law Reform bring this matter before the next General Assembly and attempt to secure the passage of an Act which shall provide that a deed or mortgage executed in another State, and executed according to the laws of that State, shall be admitted to record in the State of Georgia and shall be sufficient to pass title."

An amendment was offered, and Mr. Hill accepted the amendment. The President then stated that the resolution would be



referred to the Committee on Jurisprudence and Law Reform to submit to the Legislature such bill as they think proper to accomplish this purpose. The Association will see that they gave very broad authority to the committee.

I also addressed the several members of the committee on that subject, and I found that all of them, so far as they gave any expression of opinion at all, were opposed to the bill of Mr. Hill. As Mr. Parks said, very properly, that if that bill was passed it would require a lawyer in Georgia to know the law of authentication in every other State in the Union. I had suggested in this letter that I would prepare a bill, and that when the committee met here that bill could be submitted to them and changed and amended as they thought proper, and if we finally reached a bill agreed upon by the committee, that measures could be taken to submit it to the Legislature. But in the absence of the committee (Mr. Parks being the only one present), it has been impossible to submit it to the committee. But I have prepared a short bill, and so far as the committee have given their views. they have concurred in it. It is a very important question for this reason, that the only mode of authenticating a deed in a foreign State is by having it attested by a commissioner of deeds for the State of Georgia, or by a judge of a Court of Record, with a certificate of the clerk under the seal of the court, that the attestation is in due form. You will not find a commissioner outside of the large cities. You will find them only in New York. Baltimore and such large cities, but not in the country. I have had some experience myself recently. There was a partition of sale in Savannah to be carried out, and under our statute law the deed had to be signed by the different heirs. Those heirs lived in several States of the Union, and up to this time, with the most diligent effort on my part, I have not been able to get those deeds attested.

<sup>&</sup>quot;An Act to amend section 2706 of the Code of Georgia of 1882; to provide for the attestation of deeds for record in Georgia; and for other purposes.

Be it enacted by the Senate and House of Representatives of the State of Georgia—

Section 1. That section 2706 of the Code of Georgia of 1882 be, and the same is, hereby amended by adding to said section the following: Or by a notary public over his official signature, with the certificate attached of the clerk of a Court of Record, in the county or territorial district of the residence of such notary, that such

party is a notary public in said county or district duly authorized, and that his signature is genuine with the seal of said court affixed; or by the clerk of a Court of Record in the county or territorial district where said deed is attested, with the certificate of such clerk, under the seal of said court, that he is the clerk of a Court of Record, and said seal is the genuine seal of said court. And every such deed must be attested also by one additional witness: so that said section as amended shall read as follows: To authorize the record of a deed to realty or personalty, it must be attested, if executed out of this State, by a commissioner of deeds for the State of Georgia, or consul or vice-consul of the United States (the certificates of these officers under their seals being evidence of the fact); or by a judge of a Court of Record in the State where executed, with a certificate of the clerk under the seal of such court of the genuineness of the signature of such judge; or by a notary public over his official signature, with the certificate attached of the clerk of a Court of Record in the county or territorial district of the residence of such notary that such party is a notary public in said county or district duly authorized, and that his signature is genuine, with the seal of said court affixed; or by the clerk of a Court of Record in the county or territorial district where said deed is attested, with the certificate of such clerk, under the seal of said court, that he is the clerk of a Court of Record, and said seal is the genuine seal of said court. And every such deed must be attested also by one additional witness.

If executed in this State it must be attested by a judge of a Court of Record of this State, or a justice of the peace, or notary public, or clerk of the Superior Court in the county in which the three last mentioned officers respectively hold their appointments. Or if, subsequent to its execution, the deed is acknowledged in the presence of either of the above named officers, that fact certified on the deed by such officer, shall entitle it to be recorded.

Sec. 2. All Acts and parts of Acts contrary to this Act are hereby repealed.

Now, gentlemen. I am sorry that I cannot offer that as the report of the committee, but I only offer it in a direction which I think should be followed sooner or later. There has been a reform in the manner of authenticating wills, and a will is good in Georgia if it would be good in the State where executed, but not so of deeds.

There is another matter it is made the duty of this committee to bring to the attention of this Association, viz., such practical reforms as they deem necessary in our law. I merely wish to bring it to the attention of the Association, and I addressed upon that subject this letter to every member of the committee:

"It appears to me that our committee can submit a brief report upon a very practical and important subject, and that is putting some check upon the present very wide liberty of amendment to pleadings. A strong illustration of this is furnished by the case of the Savannah, Florida & Western Railway, decided March 16th, last. It has become a very common practice here for defendants simply to file the general issue, and then, by way of amendment, to file the balance of their pleas when the case is called for trial. This always produces some surprise and denies to the opposite counsel the opportunity for preparation on every issue presented, which is due to him and to the court. In many cases it is done to create surprise and force a continuance. I do not see how any lawyer, friendly to the higher demands of his profession, can approve of such methods. I think that all pleadings should be filed during the first term, and none later, unless an oath is filed that the subject-matter of the defence was not known to the client or counsel at an earlier day. And that in all such cases the court should have a right to impose terms and put the costs on the party in delay. If you agree with me I can prepare a brief report embodying these views.

In response to that letter I received no reply from some of the members. I did get a reply from Mr. Parks. I got also a reply from Mr. Black, of Augusta, and they suggested that they thought some reform in that direction was very essential, but they did not fix the terms upon which that reform should be made; I prepared a bill, but in the absence of the committee I have been unable to get their report upon it, but I beg, as a matter of history. with a view of referring it to the next committee, or some other committee on that subject, and with a view of carrying out finally some measure, I may be allowed to read the bill I have prepared, and which is an amplification of the statements contained in my letter and the letter addressed to the members of the Committee:

The Committee on Jurisprudence and Law Reform is, by By-Law VII., charged with the duty of recommending such changes in the law, as in their opinion, may be entitled to the favorable consideration of the Association.

It appears to your committee, as an important practical question, that some change is needed in the present wide latitude of the amendment of pleadings allowed in this State. A very strong illustration of this is furnished by the recent decision of our Supreme Court, in the case of the Savannah, Florida and Western Railway Company against Watson, rendered March 16th, 1891. The Supreme Court held that it was error to refuse to allow defendant to amend its plea of the general issue by filing a plea of the statute of limitations, though the jury had been charged with the case, and had retired to their room, and though plaintiff's

counsel stated that he would be surprised by the amendment; that his client had been sent home before he knew of the offer to amend the plea, and that were his client present, he could testify to such facts as, in his opinion, would take the case out of the bar of the statute. Code. \$3479.

The court declared that, while the facts showed gross negligence on the part of defendant in not sooner offering the amendment, yet under the section of the Code cited, he had a right to make the amendment at any time before the jury returned their

verdict.

The court added that it seemed that the section of the Code cited goes too far in allowing amendments, and that the right to amend ought, at least, to cease after the jury have been charged

with the case and have retired to their room.

It has become a very common practice, in at least some of our judicial circuits, for defendants to file simply the general issue, and then, by way of amendment, to present the balance of their pleading when the case is called for trial. This method always produces some surprise and denies to the opposite counsel the proper opportunity for full preparation on every issue raised, which is justly due to him and to the court. The best feature of the common law system of pleading is practically eliminated, and a loose practice is substituted which tends to prevent proper prevision

and to impair thorough professional equipment.

In some instances the pleading is delayed to the last moment, for the express purpose of creating surprise and forcing a continuance, and new occasion is added for the common complaint of the law's delay. Your committee does not believe that any lawyer, friendly to the higher demands of his profession, can approve such methods. Section 3482 of the Code provides that where the amending party has been guilty of negligence, the court may compel him to pay his adversary the cost of the proceeding for which he moves, and may put him upon reasonable and equitable terms; but every practitioner is aware how seldom this discretion is exerted, and how little it tends to cure the evil complained of.

Your committee recommend that the Legislature be asked to alter the present law, so as to require pleas and amendments thereto to be filed within a reasonable period before trial, and that no amendment be allowed at the time of trial, unless the party pleading, or his attorney, will make oath that said pleading is offered in good faith, and not for the purpose of delay, and that the subject-matter thereof was not known to the pleader or his attorney at an earlier date. And if the court is satisfied that such new facts could have been discovered at an earlier date, by the exercise of proper diligence, the cost of the case to date, or such portion as the court may deem proper, shall be imposed upon the party guilty of negligence, and he shall be put upon such terms as to the hearing, as to the court may seem just.

Your committee further recommend that no pleading by way



of amendment shall be allowed after the jury have been charged with the case and have retired to their rooms.

Your committee submit herewith a bill to carry out the above

views:

An Act to amend section 3479 of the Code of Georgia of 1882; to regulate the time of filing amended pleadings in the courts of this State;

and for other purposes.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Georgia, That after the appearance and answer of the defendant at the term to which the suit against him is made returnable, as prescribed by section 3452 of the Code of Georgia, the said defendant may file further pleas by way of amendment at any time in vacation and prior to the next or trial term of the court, upon giving to the plaintiff or his attorney, at the time of filing such new or amended pleadings, written notice of the filing of the same, with a copy of such pleading.

SEC. 2. That the defendant shall not be allowed to file, at the second or trial term of the court, or at any subsequent term, or at the time of trial, any new or amended pleading, without filing therewith an affidavit made by said defendant or his attorney, that said pleading is filed in good faith, and not for the purpose of delay, and that the facts set forth in said pleading were not known to said defendant or his attorney at an earlier date; provided, however, that this rule shall not apply to the correction of a mere matter of form, or to pleadings necessary to render fuller or more clear the pleading already on file on the

objection to want of fulness or clearness by the plaintiff.

Sec. 3. If the court shall be satisfied that the new facts contained in such amended pleading could have been ascertained at an earlier date by the exercise of due diligence on the part of the defendant or his attorney, it shall be the duty of the court to impose upon said defendant the costs of the case up to and including the filing of the new pleading, or such portion thereof as to the court may seem proper. And should the plaintiff claim surprise, or a postponement of the hearing become necessary by reason of the introduction of such new or amended pleadings, the court shall put the defendant upon such terms as will speed the trial of the case and to the court shall appear just.

Sec. 5. In corporation or other courts, which by statute have certain fixed periods for the filing of pleas, suitors in said courts will be governed thereby, and all new and subsequent pleadings by way of amendment or otherwise will be controlled by the pro-

visions of this Act.

I cannot present that as the report of the committee. I merely read it as a part of the history of this matter. I trust the Association will refer it to some future committee, and that we may make some start in what I consider a very needed reform.



# CONSTITUTION AND BY-LAWS.

#### ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

## ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided.

#### ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee, to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the next year ensuing, but the same persons shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

# ARTICLE IV.

At the meetings of the Association, all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballots, and several nominees, if from the same country, may be voted for upon the same ballot, and, in such case, placing the word "No" against any name or names, upon the ticket, shall be deemed a negative vote against such name or names, and against those



only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

# ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

# ARTICLE VI.

By-Laws may be adopted at any annual meeting of the Association by a majority of the members present.

#### ARTICLE VII.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each:

- 1. On Jurisprudence and Law Reform.
- 2. On Judicial Administration and Remedial Procedure.
- 3. On Legal Education and Admission to the Bar.
- 4. On Grievances.
- 5. On Memorials.
- 6. On Federal Legislation.
- 7. On Interstate Law.
- 8. On Legal Ethics.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

# ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

#### ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

#### ARTICLE X.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

#### ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-Laws.

#### ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.\*

<sup>\*</sup>The charter w s duly obtained. See First Report, page 16.

# BY-LAWS.

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The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

#### II.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$100 per annum.

## III.

The Treasurer shall collect and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall, at all times, be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

#### IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the programme for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the

protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same. They shall have the power to make the Association liable for any debts amounting to more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

#### V

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

- 1. Reading minutes of preceding meeting.
- 2. Address of the President.
- 3. Report of Treasurer.
- 4. Report of Executive Committee.
- 5. Elections, if any, to membership.
- 6. Reports of other standing committees.
- 7. Report of special committees.
- 8. Election of officers and appointment of committees.
- 9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

#### VII.

In pursuance of Article VII. of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who

shall be charged with the duty of attention to all proposed changes in the law, and of recommending such, as in their opinion, may be entitled to the favorable consideration of the Association.

- 2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association, such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge, from all the members of the Association, and, if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.
- 3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose, in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

- 4. A Committee on Grievances, who shall be charged with the hearing of all complaints, which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of the bar, and the administration of justice, and to report the same to this Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive ('ommittee out of moneys subject to be appropriated by them.
- 5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief and appropriate notices of members who

notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of the bench or bar of Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meetings; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.

- 6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such federal legislation, proposed or enacted, as may be of interest to the legal profession, and especially such as affects the federal judicial system, and procedure and practice in the federal courts.
- 7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end; and, where such action is favored by this Association, to bring the same to the attention of the General Assembly, and to endeavor to secure the adoption of the legislation so recommended.
- 8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relation of lawyers to the courts, the public, their clients and each other; with the further duty of taking such actions as they may deem best, in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention.

# VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the



committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such a rule.\*

# IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet, for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at the place of business during office hours, properly addressed to him. If, after hearing his explanation, the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of \$\$420 and 434 of the Code, inclusive.

#### X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

<sup>\*</sup>As to payment of expenses of committees, see Report for 1885-86, page 70. As to printing committee reports in advance of the annual meetings, see Report of 1886-87, page 6.

#### XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor, but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

# XII.

All annual dues to this Association shall be paid in advance by each member upon his election, and in advance one month before each annual meeting for each year during membership, and any member failing to pay his annual dues in such manner shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, unless, for good cause shown, the President shall excuse such default, in which last event the name of such member shall upon the order of the President, be restored by the Secretary to the roll of membership.

#### XIII.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

#### XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer, that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

#### XV.

The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee, the Secretary shall

give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during any year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

#### XVI.

No resolution complimentary to any officer or member shall be entertained.

#### XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting; and, if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

# OFFICERS AND COMMITTEES.

1891-92

## PRESIDENT:

# JOHN PEABODY.

#### VICE-PRESIDENTS:

First-A. O. BACON.

· Third-ALLEN FORT.

Second—John I. Hall.

Fourth-John W. Park.

Fifth-W. H. FLEMING.

## EXECUTIVE COMMITTEE:

W. B. HILL,

W. DESSAU,

MARION ERWIN.

H. A. MATHEWS,

E. W. MARTIN.

AND THE SECRETARY AND TREASURER ex officio.

Secretary:

Treasurer:

JOHN W. AKIN.

Z. D. HARRISON.

# STANDING COMMITTEES OF THE GEORGIA BAR ASSOCIATION FOR 1891-92.

#### ON JURISPRUDENCE AND LAW REFORM.

J. W	'. Park,								Greenville.
B. H	I. Bigham,								LaGrange.
A. R	. Lawton, J	r.,							Savannah.
J. R.	Lamar, .								Augusta.
S. B.	Hatcher,								Columbus.

# ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

J. H. Lumpkin,						
Hoke Smith,					•	Atlanta.
W. M. Reese, .				•		. Washington.
T. G. Lawson,						Eatonton.
Olin Wimberly,						Macon.

# ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

W. H. Fleming	,					٠.		Augusta.
J. H. Harley,								Sparta.
D. B. Evans,								Sandersville.
B. P. Hollis, .				•				Americus.
Claude Estes,	•							Macon.

#### ON GRIEVANCES.

S. G. McLendon,	•				Thomasville.
W. D. Kiddoo,					Cuthbert.
Richard Hobbs, .					Albany.
E. P. S. Denmark,					Quitman.
J. M. Griggs, .					Dawson.

### ON MEMORIALS.

L. C. Levy, .							Columbus.
W. Y. Atkinson,							Newnan.
J. M. Mobley,							
H. W. Hill,							Greenville.
E. A. Hawkins,							

## ON FEDERAL LEGISLATION.

Marion Erwin, .				Macon.
H. A. Matthews, .				
B. F. McLaughlin,				
A. R. Jones,				Thomasville.
H. E. W. Palmer,		•		Atlanta.

	,	
W. S. Basinger, F. S. Foster, J. T. Jordan,		Dahlonega. Madison. Sparta.
	ON ETHICS.	
C. N. Featherston,		Rome.
A. M. Foute, .		Cartersville.
E. W. Martin, .		Atlanta.
M. M. Sessions, .		Marietta.

### **OFFICERS**

OF

# THE GEORGIA BAR ASSOCIATION FOR PAST TERMS.

#### 1883-1884.

President.

L. N. WHITTLE.

Vice-Presidents.

1—CHARLES C. JONES, JR. 2—HENRY JACKSON.

3-M. H. Blandford. 4-Pope Barrow.

5-GEORGE A. MERCER.

Secretary and Treasurer.-W. B. HILL.

1884-85.

President.

WILLIAM REESE.

Vice-Presidents.

1—F. H. MILLER. 2—L. F. GARRARD. 3-W. S. BASINGER.

4-W. M. HAMMOND.

5-H. P. Bell.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

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#### 1885-88

President.

#### JOSEPH B. CUMMING.

Vice-Presidents.

1—Р. L. Мунатт.

3-J. M. PACE.

2-W. A. LITTLE.

4-W. H. DABNEY

5-F. G. DuBignon.

Secrétary.

Treasurer.

W. B. HILL.

S. BARNETT, JR.

1886-87.

President.

#### CLIFFORD ANDERSON.

Vice-Presidents.

1—N. J. HAMMOND. 2—W. L. LITTLE. 3-A. S. ERWIN.

4-A. H. HANSELL,

5—J. С. С. Власк.

Secretary.

Treasurer.

S. BARNETT, JR.

W. B. HILL.

1887-88.

President.

#### WALTER B. HILL.

Vice-Presidents.

1-GEO. A. MERCER.

3-J. E. SHUMATE.

2-Pope Barrow.

4-B. P. Hollis.

5-E. N. Broyles.

Secretary.

Treasurer.

J. H. LUMPKIN.

S. BARNETT, JR.

#### 1888-89.

#### President

#### MARSHALL J. CLARKE.

## Vice-Presidents.

1-J. C. C. BLACK.

2-A. S. CLAY.

Secretary.

JOHN W. AKIN.

3—С. С. Ківвее.

4-A. T. McIntyre, Jr.

Treasurer.

S. BARNETT, JR.

#### 1889-90.

#### President.

#### GEORGE A. MERCER.

#### Vice-Presidents.

1-W. DESSAU.

2-Pope Barrow.

Secretary.

JOHN W. AKIN.

3-John L. Hopkins.

4-R. S. ATKINSON.

Treasurer.

S. BARNETT, JR.

### 1890-91.

#### President.

#### FRANK H. MILLER.

#### Vice-Presidents.

1-M. J. CLARKE.

3-P. W. MELDRIM.

2-C. N. FEATHERSTON.

4-M. P. Reese.

5—George D. Thomas.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON.

# ROLL OF MEMBERS.

Adams, A. P Savannah.	
Adams, S. B Savannah.	
Akin, John W	
Akin, John W	
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# MEMORANDA.

I.—Members whose names have been dropped from roll for non-payment of dues can be re-elected on payment of one year's back dues, pp. 7-8.

II.—The following standing committees failed to report:

(a) On Ethics, pp. 9, 10,

(b) On Grievances, pp. 11, 21.

- (c) On Legal Education and Admission to the Bar, p. 21.
- (d) On Interstate Law, p. 21.

III.—References to committees:

- (a) To Committee on Judicial Administration and Remedial Procedure.
  - 1. Paper on Property Rights of Married Women, pp. 10, 11.

(b) To Committee on Jurisprudence and Law Reform.

- 1. Recommendations in President's address on teaching of Elementary Law, p. 19.
- IV.—Subjects specially appointed for consideration at next annual meeting:
  - (a) Report of Committee on Publication of Statutes, pp. 15, 16.
  - (b) Bills relating to dissolution of corporations, first day, pp. 17, 18.
  - (c) Bill relating to amendment of pleadings, first day, p. 19.

(d) Exchange of briefs in Supreme Court, pp. 24, 70, 71.

- V.—Changes in law of execution of deeds were recommended, bill therefor indorsed, and Chairman of House Judiciary Committee requested to introduce same—Hon. Warner Hill, pp. 18, 19.
- VI.—The Chief Justice and associate justices of the Supreme Court of Georgia were appointed, by special resolution, delegates to the 1891 annual meeting of the American Bar Association, p. 22.
- VII.—The codification of United States criminal law was recommended and the Georgia council of American Bar Association requested to press to its passage in that body a resolution favoring the same.
- VIII.—The Annual Association banquet was spread at the Rankin house on Thursday evening after adjournment; the Columbus bar, having on the afternoon of the preceding day tendered a moonlight ride down the Chattahoochee on steamer, accompanied by a collation.
- IX.—The next annual meeting will probably be held in Macon, on June 1st, 1892.



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L. J. C. Camar

## REPORT

Of the ELEVENTH ANNUAL MEETING of the

# GEORGIA BAR ASSOCIATION,

Held at ATLANTA, GA., JULY 31 and AUG. 1, 1894.

EDITED BY JOHN W. AKIN, SECRETARY.

ATLANTA, GA.:
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#### EDITOR'S PREFACE.

In editing this report of the eleventh annual session of the Georgia Bar Association, no pains have been spared to do the work correctly. The sketch of Mr. Justice Lamar (page 149) was prepared originally by Hon. Walter B. Hill, for The Greenbag, whose publisher has kindly allowed us to reprint the same, and has loaned the Association the plate from which the frontispiece engraving is taken; for both of which the Association acknowledges its indebtedness to The Greenbag. All of Judge Bleckley's remarks, other than those of official routine, are deemed sufficiently important to authorize indexing under his name, though they appear in the text as made by "The President," he being such at the time.

The Bar Association Reports are recording, in part, history which we are making every day. How invaluable would we now esteem a stenographic report of a session of Georgia lawyers from the first ranks of the profession convened, say, from fifty to a hundred years ago; containing papers by chosen essayists, remarks by others, memorials of their distinguished dead; and being a composite mental photograph of the Georgia bar as it was in the long ago?

Do we esteem our reports as highly as they deserve? Even now I receive from other States occasional urgent inquiries for the earlier volumes which are out of print. Our reports are sought after and highly prized in other States of the union and by public librarians, and it is only justice to our members who have made these reports what they are, to say that impartial comparison gives them a high rank in the legal literature of the United States. It is respectfully suggested to each member that he carefully preserve his copy of each report and have them bound, three or four reports to the volume, in law sheep.

The work of digesting and submitting to the bar and the press the reasons for the necessity for increasing the number of

Supreme Court judges (see pages 39-54) was done as faithfully as my ability permitted. A copy of this digest is appended to this volume immediately after the roll of members. I mailed two copies to each lawyer in the State, accompanied by a circular letter to each, begging his influence in behalf of the adoption of the Constitutional Amendment; and one copy was sent to the editor of every newspaper in Georgia, with a letter asking the publication of the digest and editorial advocacy of the measure. As a rule they responded heartily.

No more unfavorable time could have been chosen for submitting to the people a proposition increasing taxation in the remotest degree. As this volume goes to press the fate of this amendment is in doubt. The adoption of this amendment, if adopted, is due to the Georgia Bar Association; if not adopted, the public has, by our agitation, been so educated on the necessity therefor that when "times get better" and cotton goes higher, such an amendment will undoubtedly be ratified. In either event, this Bar Association has by this work, if by no other, justified its existence.

No one who has not tried it knows how laborious is the office of Secretary of this Association. The discharge of these arduous duties is, however, made pleasant indeed by the courtesy and forbearance with which the Secretary's labors are received by the profession. It is grateful and refreshing to receive even the qualified, though undeserved, approval of the Georgia bar.

JOHN W. AKIN, Secretary.

Cartersville, Ga., October 4, 1894.

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# GENERAL MINUTES.

#### FIRST DAY'S PROCEEDINGS.

ATLANTA, GA., July 31, 1894.

The Eleventh Annual Session of the Georgia Bar Association convened in the Superior Court room in Atlanta, Ga., at 10 A. M., Logan E. Bleckley, President; John W. Akin, Secretary.

The President: The Association will come to order. The first business is the roll-call and reading of the minutes of the last meeting.

W. Dessau: Mr. President, we have with us this morning a very distinguished gentleman from a sister State, the President of the State Bar Association of Tennessee. I move the suspension of the general order for the purpose of introducing to the Association Judge Henderson, of Tennessee. Carried.

W. C. Glenn: Mr. President, there is also present a former Georgian, now holding a distinguished position in the State of Texas, Judge H. B. Green, of the Forty-eighth Texas Judicial District. I move he be also introduced. Carried.

The President: Judge Henderson will please come forward and occupy the platform. (Judge Henderson complied.)

Gentlemen of the Association, I have the pleasure of introducing to you our brother and friend, Judge Henderson, a former member of the Supreme Court of Tennessee and now the President of the Bar Association of that State.

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The Association arose to their feet and bowed, Judge Henderson also arising and bowing.

The President: Will Judge Green please come forward? (Judge Green ascended the stand by the President.) Gentlemen of the Bar Association, I have the pleasure of now introducing to you a former resident of Georgia and member of this Bar, now one of the presiding judges of the State of Texas—Judge Green.

The Association and Judge Green arose and bowed.

The next business in order is the report of the Executive Committee.

A. C. King submitted report. (See Appendix 1.)

The President: Gentlemen, you have heard the report. What shall be done with it? If there is no objection it will be considered as received and adopted. All in favor of receiving and adopting the report will say aye. Carried.

The President: The next business in order is rather a distressing stage of business with me. the President's address. Before entering on the official stage of the address, I wish to have a private and confidential conversation with the members of the Association individually. I think it will accord with your own experience that heredity sometimes results from an over-intent desire to be productive. I have experienced that in my endeavoring to make preparation for the address which I am expected to deliver. have been well aware that on account of the accidental union in the same person of two such dignitaries as the Chief Justice and the President of the Georgia Bar Association great expectations have been aroused on this occasion. Indeed, to be frank and tell you the truth, for some time I entertained them myself. [Laughter.] made honest and strenuous efforts to meet and gratify such expectations, whether in my own mind or in the minds of others. But I have been doomed to a great disappointment myself, and it is a disappointment in which you must necessarily share.



The address which I should have delivered was very voluminous, but I have left it all out. I have not brought it with me to-day. I have prepared it-indeed I have prepared half a dozen addresses, but none of them were satisfactory, and I have rejected them all except a very brief one which I shall read to you presently. I have got quite a mass of manuscript that has some bearing on various subjects. At one time I thought I would deliver an address under the title "An Address without a Subject," or "Several Subjects without an Address." I did not know exactly which to adopt. I was puzzled considerably and long. I have written on several subjects, but I was unable to satisfy myself: and I know if I would not be satisfied, you would not; and therefore I have left nearly everything out. In order to compensate for the brevity of the address itself, I have taken the liberty of innovating upon the usages of this Association, and I have presented something more than an address. By way of a supplement to my address I shall submit a report, so you will have a presidential address and a presidential report. [Laughter.] I now proceed to read these documents, and would beg your indulgence for the subject-matter of them and for their brevity, if brevity ever needs any indulence; I do not think it does. The subject of the address is "Causation," and the subject of the report is myself.

#### INTRODUCTORY.

Gentlemen of the Association:

If I could realize my own ideal, whatever I produce would be in volume a fragment, in thought a volume. My model for all things that involve expression is condensed head-notes rather than expanded opinions. The labor of production should be done by the producer and not thrown upon the consumer. By labor I mean thought-work, not handicraft or alternate contraction and expansion of the muscles. A problem of first importance for the intellectual artist to solve is, how to put the most soul into the least body, how to represent the largest bulk of the immaterial by the smallest mass of the material. As I am no artist of any sort, of course I must fail, but attempts are educative, not only to those who make, but to those who witness them.

#### ADDRESS.

#### CAUSATION.

The laws of thought, which must preside
In rightly judging other laws,
Make sure that Reason shall decide
Existence was without a cause.
An antecedent purely naught
Has no admittance into thought.

Whoever seeks a cause for all
Will vainly seek what none can find;
Causation has to such a call
No answer for bewildered mind.
Within the whole must cause abide;
The sum of all has no outside.

Existence scan without control,
And one of these must be its chart—
Eternal must have been the whole,
Or else a part has caused a part.
Causation, now confined to change,
Could thus have had creative range.

While every change must have a cause
The cause of change must be supreme
The pre-existing source of laws
That fetter things of less esteem.
Though subject must the sequent be,
All primal being must be free.

Applied to change, causation stands,
Full crowned with universal sway;
Applied to being, its commands
Beginning only could obey.
No sway of cause, no causal rod,
Could be extended over God. [Applause.]

#### REPORT.

[Judge Bleckley here submitted what he termed a report, which was a model of wit and humor, but which, on account of certain personal aspects, he insists shall be omitted from the published proceedings. As this production was eminently Bleckleyesque, the learned Judge's refusal to allow it printed is much to be regretted, and its absence is a positive loss to this volume.—Editor.]

The President: The next is the Treasurer's report.

Treasurer Harrison then submitted his report. (See Appendix 2.)

Z. D. Harrison: I move that the Treasurer be allowed to credit all payments on account of annual dues that may be made prior to the time when the Secretary shall require the report for publication. Carried.

The President: What shall be done, gentlemen, with this report? I believe we have already had the approval of the Executive Committee upon it.

On motion of A. W. Smith, the report was adopted, and ordered spread upon the minutes.

The President: The next in order is the election of members. Are there any candidates?

D. W. Rountree: Mr. President, I propose the name of H. B. Peeples, of Nashville, Berrien county.

The President: Are there any more members proposed by gentlemen?

Mr. A. C. King: I move that the Secretary be instructed to cast the ballot of the Association for Mr. Peeples.

The President: The Secretary will vote for Mr. Peeples if he believes he is a suitable man for membership. [Laughter.]

The Secretary: Mr. President, I have great pleasure in voting unanimously for Mr. Peeples. [Laughter.]

The President: Mr. Peeples is admitted by the Secretary's unanimous vote. We are glad to receive him. For myself, I am always gratified to see accessions to the membership of the Association. My notion is we should all join in sending out people to debate about the Association and to get all the profession inside of it. It is a good thing, but I know that those who fail to join it do not understand it fully. They ought to be instructed by a joint debate; and if it was in order I believe I would take the sense of the Association upon that question, but it is not in order. The next is the report of the Committee on Jurisprudence and Law Reform, Judge Hillyer Chairman.

George Hillyer: Mr. President and gentlemen of the Bar Association: It is proper for me to state that the report I am about to submit is the product of the joint action of the committee, but as to some of the propositions the committee were not unanimous. They are inserted upon a vote of a majority of the committee, but the entire committee unite in the report at the will of the majority; that is, that portion of the committee who took part in the deliberation. I did not mean to intimate that there was a difference of opinion as to all of the propositions, for as to many the committee were unanimous. (See Appendix 3.)

The President: Gentlemen of the Association, you have heard the report.

A. C. King: I move that the report be received and stand for consideration at the proper time, and in its proper order. Carried.

The President: The next is a "Symposium on our Judicial System: Is it defective? If so, wherein?" The first participant in this symposium is our distinguished brother, Judge Turnbull, of Rome. (See Appendix 4, A.)

The President: The next is J. J. Hunt. Is Judge Hunt present?

J. J. Hunt: Mr. President, I have made no preparation on any symposium on this subject, and therefore have none to present.

The President: Very well. Judge Sweat will please take the stand.

J. L. Sweat: Mr. President, my paper is in the form of a letter addressed to the Secretary of the Association, and I will read it just as I have written it. (See Appendix 4, B.)

The President: The next is Judge Gober.

The Secretary: Mr. President, I have a letter from Judge



Gober telling me that he is holding Cobb Superior Court to-day and is prevented from attending.

The President: Judge Bowers is the last on the list.

The Secretary: Mr. President, Judge Bowers has sent to me his paper, with the statement that it is impossible for him to come. Shall I read it?

The President: Yes.

The Secretary then read the paper. (See Appendix 4, C.)

The Secretary: Mr. President, those are the names of all the gentlemen who did me the honor to accept the invitation; that is, those are all the acceptances which I have received. I beg to say now that some other gentlemen invited on either this or some other symposium may have sent acceptances which have not reached me; and I ask, if there be any such present, that they feel no hesitation in giving their names to me or to the President.

The President: The last on the list is Judge Bower. If there be any other gentlemen of the bench present who have been notified to participate in this symposium, and have not been heard from, they will please announce themselves, and we will hear now whatever they have to read or say on the subject; and I will add that as Judge Hunt is present and has not prepared a paper, he will be heard from orally, if he will grant us the pleasure of hearing him; so with any other judge of the superior or city court who may be present. (A pause.) There is no response; so we will proceed to the regular order of business.

Samuel Lampkin: Mr. President, I had the honor to receive one of those invitations from our Secretary, and replied to him that owing to the pressure of official work it would be impossible for me to contribute to this Association anything of value. I therefore do not rise now for the purpose of making a speech, or entering upon any discussion of the several questions which have been mentioned or suggested by the contributions that have been

made to this order of our business. But, if I am in order, I rise simply to make a request of the members of this Association which I trust they will regard. I have been profoundly gratified, gentlemen, by the unanimity which seems to prevail among all the members of this Association, and, as far as I am advised, among the members of the Bar of Georgia generally, in favor of the proposed constitutional amendment to increase the number of Snpreme Court Justices from three to five, but it will not suffice that we, as members of the legal household, agree upon this among ourselves, and desire to see enacted into our constitution this unquestionably essential and vitally important amendment. The request I have to make is this: that each and all of you will take a personal interest in this question and work for its adoption among your respective people; and the kind of work that I take the liberty of suggesting is simply to educate the public upon the importance of this amendment. I have an abiding faith in the people of Georgia doing the right thing when they know what it is. They have unhesitatingly in the past. through the Legislature, whenever there appeared to be a need of a new judicial circuit, granted it; they have established city courts in all the places that have called for them: they have established county courts: and I have not the slightest doubt but that they will grant us this needed amendment if they only know the merits of it, and they will understand the merits of it if the members of this learned Association, and the members of our profession generally, will undertake, upon all fitting and proper occasions, to instruct them upon this question.

If you will pardon me, I will mention briefly an incident that came within my personal observation. It happened some two or three years ago, when I was visiting in another circuit. I was attending the Superior Court of Taliaferro county, a county where the population is as true and good people as I ever came before. During some lull in the proceedings,—the grand jury were there, and it was a representative body of men, representing as fairly and fully as

possible the intellect and intelligence and the virtue of that good county,—it chanced, in a little conversation we were having, that some member of the jury asked me what I thought of the amendment to add two judges to the Supreme Court. Before answering his question I thought I would test the party, and I said: "Gentlemen, before I say anything about this I would like to know what you think." I took the vote of the body, and they were unanimously opposed to it; and they were good men. After that I undertook to give them the leading reasons why this amendment should be adopted. I gave them a simple presentation of the actual truth of the case, which I need not go over now, because you understand it: but after that talk they were unanimously in favor of it;—I polled the body. If this work is done, it must be done by the heart and will of our brethren. This is what I arose to say, and I will feel gratified if the members of this Association will pay some attention to this request, and help us out by contributing to this work among our respective people. [Applause.]

The President: Gentlemen, the subject upon which the symposium was held is open now for discussion by any and all members of the Association in five-minute speeches. We invite you,—I do, as President, invite you all for expressions of opinion upon what you have heard read or thought of yourselves.

N. J. Hammond: Mr. President, I desire to add one word to what Judge Lumpkin has said, purely of a practical nature. Not only do communities need education on the subject, but they need actual help in a certain way on election day. If gentlemen interested in the election will have printed upon the tickets the proper approbation of the amendments, very many persons will vote for them who never would take the pains to write them out. I do not know but perhaps the number of candidates is increasing so largely that they will print the tickets, but whether they do or not, somebody ought to do it.



A. W. Smith: Mr. President, without rising to discuss the question, but following up the suggestion made by Judge Lumpkin, and as a practical suggestion on the subject, I move the appointment of a committee of three to prepare a brief statement as to the merits of the question involved in this proposed amendment of the Constitution, and disseminate it through the press in the State of Georgia, and through that means undertake to reach a number of people that could not be reached otherwise perhaps. I am informed by the Secretary, however, that that is not now in order, but will be later on.

The President: I will announce to the Association that three judges, Turnbull, Sweat and Bowers, have exhausted this subject, and we will now proceed to something else. The first business in order is the motion of Mr. Smith. Has that motion a second, that a committee of three be appointed to prepare information and look to its circulation among the people with regard to the reasons and propriety of the constitutional amendment about the Supreme Court? Is there any second to that motion?

Several members seconded it simultaneously.

Walter B. Hill: Mr. President, before that motion is put to the house I desire to state for information, that there is a special committee which has already been raised by this Association for the purpose of presenting a report to this body, which will deal with the very facts contemplated by the motion now before the house. It is a motion that was passed, I believe, at the meeting last year at Rome, that a committee consisting of the ex-Presidents of the Georgia Bar Association should prepare a report upon the question of the condition of the Supreme Court with reference to the embarrassments now attending the administration of justice by that court, on account of there being but three members of the court. I am informed that the President of that committee will report to-morrow, and I merely say by way of information that, if this motion

is deferred until that time, very probably the Association will see whether or not this special committee has not already got together the very data which are contemplated by the motion now made.

A. W. Smith; I withdraw my motion for the present, Mr. President.

The President: The motion is withdrawn.

George Hillyer: Mr. President, I did not read the resolution on that subject in the report I made a while ago, as I did not bring it from the office. I have prepared another one which I beg to read and refer it to that committee. The resolution is this:

Resolved, That the pending amendment to the Constitution of this State, by which it is proposed to increase the number of judges from three to five is wise and proper, and should receive the indorsement and support of the people at the approaching election.

I move that this resolution be referred to the committee on this subject.

Alex C. King: Mr. President, I would like to call the attention of gentlemen of the Association to the fact that in the order of business, which will probably be reached this afternoon, there is a special place for the introduction of all resolutions and motions. There is later on a place for consideration and action upon all resolutions and motions. The idea of the Executive Committee in preparing this order was to enable the Association to get the advantage of such information as the reports might contain before acting upon the different resolutions which might be submitted; and in order that the subjects which we will deal with may be all before this Association, so that we may deal with them all together, and perhaps get a more intelligent understanding thereby, I therefore suggest to Judge Hillyer that he introduce his resolution and let it lay on the table.

George Hillyer: I will give it that direction.



The President: The report of the Committee on Judicial Administration and Remedial Procedure.

A. C. King: Mr. President, before proceeding to that I will ask the consent of this Association and the Chair to return to the subject of the election of members.

The President: If there is no objection, that will be done.

A. C. King: We have the names of John S. Candler, J. Y. Allen and M. H. Sandwich, and I move their election.

The President: If there is no objection the Chair will direct the Secretary to cast the ballot of the Association for these gentlemen.

The Secretary announced that he had cast the ballot of the Association for the persons named.

B. H. Hill, Jr.: Mr. President, while we are in this order I arise for the purpose of making a motion. I move that we elect as an honorary member of this Association Master Edwin Herren Bleckley, a promising son of our distinguished President. [Applause.]

The President: Excuse me, I cannot put the motion. Under the order of business I cannot put the motion.

C. A .Turner: I believe, gentlemen, in prophecy. A young man of the graduating class of Mercer University, who had recently read the address of our distinguished. President, delivered at Rome, on "Women at the Bar," admired that address very much, and copied an extract from it with his comments, which, with the permission of this body, I propose to read, and then to second the motion of my friend, Mr. Hill. The subject of this address was "Love, Law and Liberty." In delivering it he said:

"The learned Chief Justice of Georgia states in an address to the Georgia Bar Association that his thoughts had long been occupied as to the best way of approaching the bar by aspirants of the gentler sex. The result of his



cogitations were that they should prepare themselves for practice by presiding on the bench; not presiding alone, but as associate judges. 'By nature,' said he, 'they are good associate judges.' Shortly after delivering the address, yielding to his convictions, he associated one of New York's fair daughters to preside with him, and the result has been most gratifying. All the lawyers of Georgia express the hope that the son may live to be worthy of his illustrious father." I second the motion.

B. H. Hill, Jr.: I will relieve the Chairman of the embarrassing position he is now in by putting the motion and asking a rising vote on it. All those in favor of the election of Edwin Herren Bleckley as an honorary member of this Association, and that the Secretary be directed to give him notice thereof and request his acceptance, will please signify it by rising. (The Convention rose as one man.) It is unanimously carried. Mr. Secretary, you will please inform him. [Laughter.]

The President: The next business is a report of the Committee on Judicial Administration and Remedial Procedure—Mr. W. H. Fleming.

When Mr. Fleming ascended the platform, he was greeted with hearty applause.

W. H. Fleming read report. (See Appendix 5.)

On motion, the report was received, to remain on the table for future consideration.

The President: The Association will next be entertained by a paper of our brother, W. C. Glenn.

W. C. Glenn: Mr. President and Gentlemen of the Association: Our profession, in common with all others, in the higher development of society, has responsibilities cast upon it by the mere growth and extent of knowledge. The problem of the present in the scientific world is the problem of development and growth and change, and how

everything has reached its present status from the worlds down to the atoms. That theory is now being applied to the study of the science of the law. I do not wish to present it in its theoretical and strictly scientific side, but in obedience to the dictates of this day and time, which is that the theoretical shall always come masked in the guise of the practical, I have thought proper to eliminate those features from the paper which deal with the merely theoretical and scientific side, and to endeavor to give it a strictly practical cast; and hence the subject of the paper which I propose to do myself the honor to read the Association is this: "The Practical Uses of the Study of the Roman Law." Mr. Glenn then read his paper. (See Appendix 6.)

A. C. King: Gentlemen of the Association, I desire to make the announcement, because some have come in since the report was read, that the banquet will take place tonight at the Kimball House, and the members of the Association are requested to meet in the parlors of the Kimball House at 8 o'clock, as we want to commence very promptly. I would ask, gentlemen, please, before leaving the hall, those who expect to attend the banquet to let the Secretary know, so that we may perfect our arrangements. It is suggested that I ask those who expect to attend to rise and be counted. (This was done.)

The President: Gentlemen will resume their seats.

The Secretary: Mr. President, I am requested to announce that an artist of Atlanta, Mr. W. M. Edwards, desires the honor of photographing this Association, and he asks that immediately upon adjournment the members will all assemble on the steps at the front of the court house. He wishes to take a photograph of the Association in a body.

A. C. King: Mr. President, I propose for election to membership in this Association the names of N. L. Hutchins, Jr., George W. Napier, W. W. Gordon, Jr. and A. F. Cooledge.



The Secretary was instructed to cast the ballot of the Association, which he did, announcing as elected those whose names were just mentioned.

On motion of B. H. Hill, Jr., the Association adjourned to 3:30 this afternoon.

## AFTERNOON SESSION—FIRST DAY.

The President: Gentlemen, come to order, if you please. The next report in order is that of the Committee on Legal Education and Admission to the Bar. Mr. Thomas is Chairman of that committee.

The Secretary: Mr. President, Mr. Thomas is absent on account of his health, and for that reason has been unable to prepare a report. Judge A. S. Erwin is next in order on the minutes. I have heard nothing from him or any other member of the committee on that subject.

J. J. Strickland: Mr. President, I am the next man, I believe, on that committee. I have a report that is prepared by a part of the committee, but I cannot say that it is the sentiment of the entire committee, for I do not know. We have never been called together. It is an expression of my own views, and that is all.

The Secretary: I would suggest that we hear from Mr. Strickland.

The President: We will hear from Mr. Strickland.

J. J. Strickland: I will state that the suggestions in this paper were submitted to Judge Erwin and Mr. Lumpkin, who are on the committee also, in an informal sort of way. (See Appendix 7.)

The President: Before taking action on this report I wish to refer to one proposition in it, and I do it with reference to my own experience. The writer of the report stated that it was a wrong both to the student and the

profession for a young man to study law by himself. Now, I did that very thing, and I have always regretted it ever since. If I had had the proper instructions I have no doubt it would have been altogether different with me. I have labored to this time under the consequence of having had no teacher, and I heartily concur in the statement that every lawyer ought to be taught. I know from my own experience that this is true. The truth is, if he is not taught he has to teach himself all his life. There is great good sense in every young man who wants to study law trying in some way to have the assistance of the proper instructor. Gentlemen, you have heard the report read. What will you do with it?

- A. C. King: I move that it be received and take the direction prescribed by the order of business. Carried.
- Z. D. Harrison: Mr. President, the nomination of members being a privileged question, I nominate Mr. James F. O'Neil for membership in this Association.

By resolution of the body, the Secretary cast the ballot of the Association for Mr. O'Neil.

B. H. Hill, Jr.: Mr. President, I desire to nominate Mr. Albert Howell, Jr., for membership.

Mr. Howell was elected by the ballot of the Secretary.

E. W. Martin: I desire to nominate Mr. W. S. West, of Valdosta, for membership.

Mr. West was also elected by the ballot of the Secretary.

The President: The next in order is a "Symposium on What Should be the Requirements for Admission to the Bar."

Here papers were read by A. J. Crovatt, L. Z. Rosser, R. R. Arnold. (See Appendix 8.)

The President: A free discussion is next on this subject, gentlemen of the Association. Anybody that chooses

to do so may speak five minutes. I invite you all, or a fair proportion of you, to speak. [Laughter.] I will tell vou what I think. I think that the unworthy or incompetent lawver will not do much wrong, if we have some way to let the people know who he is. That is our trouble The real difficulty about this matter is that we have no system of making the public aware of who he is—no system from the inside. We all know one another, and we know whether we are humbugs or not. [Laughter.] But we won't tell. [Renewed laughter.] And we could not tell. It is impracticable for us to tell. I need a doctor sometimes. I know a few members of the profession: but if those I know are out of town, and I want information about others I cannot get it. The professional walls are impregnable for me if I go to seek information inside of them. And so it is with us and all other professions. We know one another, but the public don't know us, and we have no way of telling the public about ourselves until the public learns by experience. We have to do what Mr. Arnold says. It is all right, but that is a pretty hard thing—a hardship upon the public. That is the trouble about it. If it was practicable we could settle this whole matter in a few minutes. We could let everybody into the profession that wants to come. [Laughter.] If we could have some system of telling on him to the public it would do, but we have not got that, and therefore it is necessary somewhat, as these gentlemen say, to guard the entrance. That seems to be the only practicable way of keeping the profession clear of men who would damage the public. When they get in we have no way of exposing them. Now, that is what I have to say on the subject, and I would like to hear from some of the rest of you.

L. C. Levy: Mr. President, I think it was the great humorist, Artemus Ward, who expressed his willingness to sacrifice the last drop of blood of all of his wife's relations in his country's cause; and the idea of admitting members of the bar that the public by experience may

find out the disadvantage of being subjected to their practices, is rather on the line of the patriotism that Artemus Ward proposed to exercise. The greatest difficulty that I see is the one that you suggest. There is no way of discovering in advance the fitness in point of character (and that is the most important prerequisite—integrity of character) that is necessary, or should be an essential to admission to the bar; but, unfortunately, where men of bad character and of deficient learning are admitted to the bar. the populace, who are least capable of affording the losses and least capable of protecting themselves, are subjected to the disadvantage of being under their control and direction; and it is a grievous wrong that the poorer classes of our population should be subjected to such disastrous results, involving frequently their liberty, their character and their property, when it could be guarded against by a judicious administration of the law in admitting members to this profession. Now, I do not see any way that could be brought about unless it was through legislative action that there should be a board constituted by the State who, without fear or favor, would ascertain both the character and the legal qualifications of those who apply for membership to the bar. Ido claim that the evil is a very far-reaching one, that admits indiscriminately men without regard to character or capacity to enter upon the discharge of the judicial functions of They are virtually a part of the State itself; the State. they are officers of the court from the time of their admission; and in the interest of society and of those least capable of protecting themselves, there should be certain safeguards thrown around this profession, in justice to the profession and in justice to the people.

N. J. Hammond: Mr. President, some help could be given if we would prescribe the time which men should study before admission to the bar. Men before they become doctors attend so many lectures. Another would be a very great improvement, if the examinations for admissions to the bar were like the examinations for admission,

say, to the University. Have them in writing; make the men answer the questions in writing. Let the applicant have no help but his own brain. Let questions be put to him that he knows nothing about until he is seated at the table, and then submit those written answers to a judge: and on an examination let him judicially determine upon his individual responsibility, whether he is learned or unlearned in the law. This matter about character is all a mistake. The profession is not suffering for the want of character in those that are admitted to the bar, but for the want of character in those who admit them. [Applause. We daily certify to what we know is a lie when we say that A, B, C and D are fit to come within this learned profession and take charge of all the high functions of our office. There is the difficulty, as in old times. when a prophet complained that false prophets have spoken lies, and he said, "Our people love to have it so." Cure ourselves, and the evil will be cured. [Applause.]

J. A. Harley: Mr. President, I should think that these remarks and statements that have been made by the gentlemen should be all the more taken into consideration from the fact that we can very well congratulate ourselves upon the truth that lawyers are more instrumental than any one else in directing the affairs of the people, whether in business or politics; for there is certainly no other profession where the members are more closely allied with the interests of the people. there is none where a better opportunity is afforded to do wrong, and there is no one who is capable of doing more wrong than a lawyer; not that there are none so bad as he, but there are none that have, as I said, the same opportunities for exercising it. A great many good cases are ruined by bad lawyers, and a great deal of time is taken up by bad lawyers bringing poor cases into court.

Now, I indorse all that has been said with reference to the examinations. I am painfully aware of how superficial I was when I was admitted, and how superficial I still remain. But, Mr. President, one great difficulty that

a lawver labors under when admitted to the bar by our usual methods is, that it matters not how well he may know what is in the books, and how good an examination he may stand, he is utterly unable and incapable of putting it into practice; and I dare say it has been the experience of every one who has studied law six months in a lawyer's office, or by himself, and then has gone into court and been examined, that for the first years of his profession he was in a The material was there, the tools were there to work with, but he did not know how to use them. one of the greatest assistants that can possibly be given is the advantage of a law school and the opporturity of practicing in moot courts. Then he will know not only the law in theory, but the law in practice. Allow me to say in conclusion, that what I say about bad lawyers I say as a result of a knowledge of myself, and not a knowledge of other people. [Laughter and applause.]

A. C. King: Mr. President, it seems to me that one trouble that prevails in construing this question of admission to the bar is, that we lose sight too much of the public duties which lawvers discharge. We look upon them alone as agents of their respective clients. Now, if one would stop to reflect, he will see that the entire putting in motion of the machinery of the court is in the hands of the attorney at law. He brings the pleadings; he goes to the clerk's office; he files it; and by his act he sets in motion the entire machinery of the law. framing of that pleading is confided to him, whether right or wrong. The court may turn it out, but under our modern system of practice, while the court may say he has committed an error, the court does not correct his error. Very frequently bad law is made because a case is badly stated, badly presented to the court. Now, I concur in Colonel Hammond's view, that a very good thing would be to have a term of practice or a term of study. It is true that some men could become lawyers in less time than that prescribed in the term average; but all law

must be made to suit a general average of the parties upon whom it is intended to operate. A great many men apply for admission to the bar because it is an easy thing to get in. It is a profession that requires no particular capital to undertake to practice it. You do not have to go to any particular man to get a place. You can get an office and hang out your shingle and offer yourself to the public. If there was a term that applicants had to serve in order to become lawyers, that very fact would act as a great winnowing process, and prevent a great many people from attempting to enter, or prevent those not fit to be lawyers from coming to the bar. I think, therefore, that Colonel Hammond's suggestion merits the consideration of the Association and the law-makers.

It has been stated that we ought to have a Board of Examiners. I do not know that a Board of Examiners would differ from the present system in letting people in when they are not qualified, but what ought to be done is this: If we adopt this Board of Examiners the machinery should be prescribed by which they would meet and have their written examinations, have those questions and those answers in writing; and before an examination is ever had let the applicant reject himself. Then there would be none of that hardship requiring you to look a man in the face and tell him he is disqualified. They would say. "You knew in advance that you had to do this; you knew in advance that these questions had been numbered, whether you knew their value or not, and we have laid down this rule, just to all men, and you have acted upon your own case, you have passed judgment upon your own qualifications." [Applause.]

The President: Has any other gentleman anything to say upon this subject? The question is, as I understand it, whether we shall have a system to keep people out, or let them come in and then turn them out. [Laughter.] One or the other of them will have to be adopted. [Laughter.] And either would do. [More laughter.] If we he some kind of internal reporting that would deal with



people fairly and justly, why, we might let them all come in.

- J. J. Strickland: Mr. President, I was going to make a remark of the same nature in behalf of the committee. but I am gratified to find Mr. Hammond and Mr. King both clinging to the idea of a written examination of the students or applicants. The suggestion made by Mr. King and Mr. Hammond both, that they read a given period of time, it seems to me, is met by the proposition, in the first place, that the certificate of the lawver with whom the applicant read certify that he has not only read the required amount of law, but that he has mastered it, that he has become proficient in the law. Let that be followed then by written questions and written answers.—questions graded, if necessary; and let those questions and answers be filed with the report of the attorneys in the clerk's office, so as to be of file for reference by everybody. That would be a publication to the world of the faith in the lawyer who is examined at the time, and it seems to me that it would be then unnecessary to prescribe any given time of reading. Under that, if they got in by six months' reading, all good and well; or if it took them six years' reading, all good and well. It seems to me that would cover it.
- W. R. Hammond: Mr. President, I am very much in favor of the idea of having a standing committee for examining applicants for admission to the bar. I think one of the difficulties in the case is that lawyers who examine the applicants are not generally competent to conduct the examination. You take the average lawyer, without any previous thought upon his part as to what questions he will ask him on the common law, for instance, and he does not have time to frame any system of examination in his own mind so as to be at all comprehensive about the questions, and he asks a few scattering questions that may occur to him at the moment, and the difficulty is he does not cover the ground, and the applicant is not examined;

his examination does not amount to anything. There is not a great percentage of the members of the bar. I think. competent to conduct the examination of an applicant for admission to the bar. There are a great many good practitioners, men who are good lawvers, and competent to manage cases in the courthouse, who are not competent to conduct an examination of an applicant. A committee could be selected of such gentlemen as have made a special study of particular branches of the law. Such men are known to us, and they are known to the judges. judges on the various circuits know what men there are in their respective circuits who are competent to do this work: and if we had such a standing committee, they would have that matter of the examination of applicants in hand, and they would be ready to ask the proper questions; in other words, they would be capable of making a thorough test of the knowledge of the applicant. seems to me that the only way to get at it is to have the right sort of examiners, and then you can find out what an applicant knows.

W. W. Gordon, Jr.: Mr. President, this discussion has lasted some time; but having had some experience in another State. I will relate it. In New York State, the bar have a system on the line of the theory advanced by several of the gentlemen here to-day. They have a standing committee in each of the judicial districts, and this committee presides over the examinations. They have a prescribed time, three years, in which a candidate must study. That time, however, is cut down by so many months in a law school, and the applicant is also required to have passed a year in a lawyer's office. He is then made to stand a written examination, and that written examination is submitted to this Board of Examiners, and they pass upon his qualifications, and admit him or reject him as they see fit. I would say in many instances candidates are rejected there; and from statements made it would appear that very few are rejected here in this State. [Applause.]

D. W. Meadow: Mr. President, it strikes me that the idea of having the certificate of the lawyer with whom a student reads, and having the written questions and answers all filed in the office of the clerk, would of itself probably come nearer the President's view of a reporter among us. It would be a record to the world whereby everybody could go and see what a man was when he started. It strikes me it would be worth something in that way.

The President: The next business in order is the introduction of resolutions and motions. All members who have anything to present in that line will now take the floor, and give us anything they may desire to have acted upon. I am advised that the purpose of this present opportunity is simply to let people in. We are not to consider or to act upon them, but just let them present what they desire to have acted upon later. There will come a time in the order of business when what you now present will be taken up for action.

Alex. W. Smith: Mr. President, I apprehend I am now in order on a motion which I made early this morning.

The President: Yes, sir.

## A. W. Smith:

Resolved, That a committee of three be appointed for the purpose of preparing an address favoring the adoption of the proposed amendment of the Constitution, increasing the number of Justices of the Supreme Court from three to five, and adopting such measures for dissemination of such address among the people and press of Georgia as they may think best and most effectual prior to the election.

Resolved 2d, That the Treasurer is authorized to defray the expense of printing and mailing said address, under the direction and approval of the Chairman of said committee.

George Hillyer: Mr. President, I understand that at the last meeting of the Bar Association at Rome a committee, (as was mentioned this morning), consisting of the ex-Presidents of the Association, was appointed to especially

consider and report upon the subject of the condition of the Supreme Court, and I move that the resolution presented by myself this morning on that subject be now taken up from the Clerk's table and referred to that committee, if I am in order in making the motion at this time. Carried

N. J. Hammond: Mr. President, I offer the following resolution:

Resolved, That the Chair appoint a committee of three members of this Association who shall draft and have introduced a bill to appoint a State Board of Examiners, and for such other means as may be deemed advisable to secure a higher grade of standing for admission to the bar.

The President: The next is the report of the Committee on Grievances. The committee consist of Messrs. H. D. McDaniel, W. S. Basinger, John Peabody, C. C. Kibbee and W. P. Meldrim. [A pause.] No report.

W. R. Hammond: It is proper for me to state that Governor McDaniel had a near kinsman that was buried today. I suppose he is detained by providential cause.

The President: Very well. The report of the Committee on Federal Legislation is next, Mr. Charlton, Chairman.

W. R. Leaken: Mr. President, I have to report that Mr. Charlton regrets exceedingly his absence, and he requested me to read for him a short paper on that subject. Such is the condition of Federal legislation just at this time, that I think probably that is one reason of his absence. I think that owing to the chaotic condition of iron, sugar, coal and other commodities, Brother Charlton is waiting in Chatham county hoping to get a better schedule on rice. [Laughter.] (See Appendix 9.)

On motion, the report was received.

The President: The next in order is the "Symposium on the Insolvent Trader's Receivership Act."



- A. C. King: Mr. President, I will call attention to the fact that it is now 5 o'clock, and as that symposium will be followed by a discussion, it will probably be better not to separate them; and if we have the discussion this afternoon we will not have a sufficient interval between the hour of adjournment and the hour of the banquet; and unless there is some objection I will move to adjourn to 10 o'clock to-morrow morning.
- E. C. Battle: If Mr. King will withdraw his motion for a moment, I will propose for membership the name of Mr. J. H. Lumpkin, of Americus, for admission to the Association.

The Secretary was directed to cast the ballot, which he did, for the gentleman named.

A. C. King: I move we adjourn until 10 o'clock in the morning.

The Secretary: Before the meeting adjourns, I desire to say that I would be glad if all gentlemen who have certificates which they desire me to sign in order to procure reduced return rates on the railroads would present them as early as practicable.

Adjourned till 10 o'clock A. M. to-morrow.

## SECOND DAY'S PROCEEDINGS.

WEDNESDAY MORNING, August 1, 1894.

The President: The Association will come to order. Before taking up the order of business I shall have the pleasure of introducing to you, gentlemen, our brother, Judge Bryant, from North Carolina, a member of the bench of the Superior Court of that State.

Judge Bryant and the Association arose and bowed.

The President: Another matter preceding the order of business is reading to you the following communication:

ATLANTA, GA., August 1, 1894.

To the Georgia Bar Association:

GENTLEMEN—Edwin Herren Bleckley accepts his election to honorary membership with sincere thanks for the high and unusual distinction, and his mother, with deeply gratified maternal pride, adds her thanks to his.

He has already adopted the maxim of "business before pleasure," and being closely engaged in his legal studies, he has requested me, for the sake of saving his time, to represent him in acknowledging the honor which you have conferred upon him.

Very respectfully, your obedient servant,

HIS MOTHER.

[Applause.]

A. C. King: Before entering upon the regular order this morning I move to suspend the rule for the purpose of proposing the names of W. E. Simmons, of Lawrenceville, Ga., and W. H. Felton, Jr., of Macon, Ga., for membership in this Association, and if there is no objection I will move that the Secretary cast the ballot of the Association.

Carried, and they were accordingly elected.

The President: These new nominees are members of the Association and have all the privileges of it. The order will be resumed now. No. 17, "Symposium on the Insolvent Trader's Act." If you can make a symposium out of that, gentlemen, do it. [Laughter.] Three gentlemen have kindly undertaken the work. The first one is Mr. Francis D. Peabody, of Columbus.

Papers were then read by F. D. Peabody, and N. J. Hammond.

The Secretary: Mr. President and gentlemen, this is a paper by the Hon. Frank H. Miller, who in sending it desires that his regrets be expressed to the Association because of his inability to attend, sickness in his family preventing. (See Appendix 10.)

The President: Gentlemen of the Association, you have heard these papers. What do you think of them? What

do you think of the subject to which they relate? Express your opinions freely. I invite you to do so in speeches of five minutes or less.

W. C. Glenn: Mr. President, I desire to express my thanks to the gentlemen who have presented these papers. They are papers from different angles of vision, but they unite in one proposition; that is, if this act is to remain, or if a system of this character is to be permanent, it needs considerable modification. I understand Brother Hammond to be opposed to the act and also to this system of procedure. I understand Brother Peabody to take the position that while the system is a good one, the act needs large modifications and amendments. I understand Brother Miller to say that it would be sufficient without so much amendment.

It has occurred to me in dealing with this act that the cases which have arisen under it might be classified somewhat in this way: First. There are a comparatively small number of cases which are brought under this act by aggressive creditors against resisting debtors. Second. There is a much larger number of cases the result, practically, of collusion between the debtors and certain creditors, and the assets are divided out in accordance with the scheme which has been agreed upon before the filing of the petition. Third. The ingenuity of our Atlanta bar has developed a still further class. They have discovered a means by which a man can run his business under this act somewnat after the manner of railway receiverships in the Federal courts.

Knowing the purposes of the act, why has it been applied in these ways? Two views may be taken of a statute. One, its essence, real meaning and object; the other its practical application in actual affairs and in the conduct of business. I have thought, and still think, that the improper uses of this act are largely due to the difficulty of making assignments which are technically sufficient under the laws of this State. The courts are used as

a judiciary machine or means of assignment. This would be obviated if a better method of assignment was in existence. No law which is opposed to the ordinary and everyday sentiments of human nature will be carried out. Men will make preferences. If they do not make them one way they will another; and where the means of doing so by means of assignment render doing so practically impossible, men will resort to other methods of achieving that end

I am often surprised by two things; one is the greatness of the human intellect, the other is what might be called the irony of the law. The most striking evidence of the first fact is found, not in the scientific and material achievements of man, but in the wonderful capacity of his intellect to devise schemes to defraud. If Sir Edward Coke, in reporting Tyne's case, could say that the law had multiplied because of the increase of fraud in his day. how much more true is the expression now. In order to meet this disposition and opportunity to defraud some system of this kind is necessary. The law must look less to the person and more to the res, the thing, get hold of it and administer it for those who are equitably entitled to be paid out of. Credit is a necessity. The capacity of collection is an essential element in credit. Insolvency must be either a misfortune or a fraud. In the first case the property ought to be seized, not only in the interest of creditors, but in the interest of debtors. In the second case it is very clear that a method of seizing the property is not only expedient but necessary.

For these reasons I think some such system as this is necessary, and I share in the opinions of Brothers Peabody and Miller that, taking this statute as a basis with proper amendments, it can and should be maintained. It is a part of the irony of the law that this statute has been used very largely in a way that it was never designed to be used. I believe that a number of the objections which have been made are not so much to the system of this sort as to the methods of its execution. These objections

law. Some of the suggestions made by Brother Peabody impress me as valuable, and if we can get rid of the troubles which have clustered around the execution of this act on account of its application and circumstances for which it was never intended, I believe it can and should be upheld.

The President: More light! [Laughter.]

N. J. Hammond: Mr. President, of course our three papers were without any knowledge each of the other, and each was giving his individual views. It seems to me that there is far less difference between Mr. Peabody's views and mine than a casual observer would suppose. mentions nine obstacles to getting into a court of equity. I do not know what they are by memory; but under the old law there was a gate which I think was amply wide for all that ought to enter. Very few of his objections would apply to the administration of the law without the act of 1881-2. I am one of those old-time lawvers who respect the foundation of property. Way back in Veasey's time you could not seize a man's property in a court of equity until after you had obtained a judgment. because the law said that until then you had no title to stand upon. In other words, nobody has a right to come into possession of any property without title. There were cases where we had to wait for title, but fraud gave liberty. Chancery said, "If you will make out a case of fraud I will let you seize without it." Just as our Supreme Court held in the Markham case, whose tenant said he intended to sell his stock and not pay his rents. threat authorized injunction or receiver unless security or other satisfaction was given. All this new fangled way of getting a receiver in three minutes by a petition of two pages at most, is simply a quick way of doing a wrong thing.

A. C. King: I do not agree altogether with Colonel Hammond as to his premises, and for that reason I am com-



pelled to differ somewhat from his conclusions. According to the recollection which I have of the rules which prevail in equity, when unaided by statute, the mere existence of fraud is not sufficient to warrant the interposition of a court of equity by injunction and receiver. As I recall the paper presented by Mr. Miller this morning, he calls attention to the fact that the United States courts have refused to enforce a statute of a State allowing a contract creditor who has not reduced his claim to judgment to file a bill to set aside a fraudulent conveyance. upon the ground that a creditor has no standing in a court of equity under the English system until that creditor has reduced his demand to judgment. Now, as I recall the decisions of our own court, the only innovations which have been made upon that rule have been where the allegations in the bill amount to such charges of fraud as enable the parties filing the bill to set up some lien or title which they claim to have which has been defeated by the frand

It occurs to me that there are two reasons which induced the passage of this act of 1880. One was the inability of creditors to obtain relief in a court of equity before judgment as above stated. The other was that the passage of this act succeeded the repeal of the national bankrupt law. It was intended to take the place of the bankrupt act, and to be also a sort of State insolvent act. The act is not perfect. The act is open to the criticism that it is too easy to set in motion thereunder the remedy of injunction and receiver. The act is also open to the criticism that under it debtors may carry out a fraudulent scheme. So far as criticism has been made upon the act that under it debtors sometimes consent to a receivership, with all respect I submit that that is in harmony with one of the purposes of the act, as I take it. It has been said it has been ruled by very high courts that it is not fraudulent in law for a receiver to be appointed with the knowledge of the debtor; that his previous knowledge, where he knows he is in no condition to go on with his business, will not

prevent the propriety of the receivership; that he may passively consent to the appointment of a receiver. fact, in cases of railroads the Federal courts have, in certain instances, held that the railroad companies were justified in filing a bill and themselves having a receiver appointed, where they were insolvent and unable to go on with their business. So that, except in so far as this act affords opportunity for the carrying out of some fraudulent scheme of the debtor through the appointment of a receiver by collusion. I do not see any very grave objection upon that ground. The principal ground that occurs to me to be objectionable in this act is—that it enables creditors with a very small quantity of debt, without much restriction around them, to set in motion this violent machinery. Now, it occurs to me that the remedy for that would be this, and I merely throw it out as a suggestion. I have not matured it to any extent. place, I think that except in very extraordinary cases no man ought to be allowed to have an ex parte injunction and receiver which will wind up a business, unless he is content to give bond and security to stand the damages. If a man's rights are so much in jeopardy, he might well give security to hold his debtors harmless against loss in the event it should turn out that he had improperly instituted such proceedings.

In the next place, the act might be amended so as not to merely make a refusal to pay, or a state of insolvency alone, give a right to go into equity, but that the party should be allowed to go into equity under circumstances where, if he had obtained a judgment under the previously existing law, he might go into equity; or where the party had done certain acts, such as giving mortgages to an extent that showed there was danger of a loss of the assets, unless a court of equity should take charge. Now, with these provisions, or something of that sort, thrown around the act, it occurs to me that the principal difficulties would be remedied. To merely say that three creditors may put a man into the hands of a receiver seems to me to be loose.

It occurs to me that it would be wise if the act provided that it should require three creditors holding debts aggregating a certain amount, say \$1,000.00 or more, or putting in a proviso requiring that there be debts amounting to one-third or one-fourth of the entire unsecured indebtedness. I think with those provisions that the act would be amended into a shape to be relieved of its dangers.

Under the system we have, this is about the only collection law of any efficiency that is left in this State. Where a man proposes to resist the payment of his debts, if he wants to do it, he can delay obtaining a judgment until when a judgment is obtained there is nothing left to answer for it, if he wants to do so. We have not got a system, as they have in the other commercial States of this country, where you can file your suit on oath, require a specific answer on oath, and, if it is not answered in a very short time, go and sign up judgment against the party. It takes at least six months in this State to get a judgment on a plain promissory note where judgment is not resisted. That is a condition that seems to be fixed. In the case of traders, gentlemen who have gone into commerce, in the case of manufacturers and corporations who are traders. it seems to me they should not ask to have applied to them conditions that are fit only, if at all, for an agricultural population. For that reason I think this act, with some amendments, could be retained.

The President: Is there anybody else, gentlemen? I will ask you to consider this suggestion. It is over-credit that is the trouble, it seems to me—much of it. Most of the traders get more credit than they are entitled to, more than their condition warrants, and you want something that will suppress credit. I do not know whether there is anything in the suggestion. If we had a law that would enable a man to get so much credit, and disable him from getting any more, that might to some extent overcome the trouble. [Laughter.]

W. C. Glenn: Mr. President, my Brother Green from

Texas tells me that the law of Texas is on the line with the suggestion made by yourself. Mortgages on stocks that are daily exposed for sale are entirely void as to third parties; and he says it works very salutarily in that State. I asked him if they did not attempt to avoid that sort of law by selling out to people. He says that they do, but the effect of that is to close them up and get rid of that class of debtors—to weed them out. I state that as somewhat confirmatory of the suggestion thrown out by the President

The President: Gentlemen, if you have said all you desire to say on this subject, the next in order of business is the report of the Committee on Memorials, Mr. Hill, Chairman.

W. B. Hill: Mr. President, I hope that the Association will not take alarm at the size of the manuscript before me. The committee will not ask that the Association shall hear this report, only a very small part of it, and that you shall give us simply leave to print.

W. B. Hill: I do not believe, Mr. Chairman, it has been customary to read the full report of the Committee on Memorials. The fact that this report covers sketches of eight of our distinguished brethren precludes altogether the idea of presenting the report to the Association in the way of reading it. It has, however, I believe, been customory to read a biographical sketch of the subject which is accompanied by an engraving. I remember, at least, that Colonel Charles C. Jones did read at the Association at Columbus a sketch of John McPherson Berrien, which he had prepared, but I shall not be able to more than read this sketch of Mr. Lamar. (See Appendix 11.)

The President: In memory of our departed brethren, I suggest that we all rise.

The members arose in silence and then resumed their seats.

The President: Shall this report be printed?

A motion to print in the minutes was made and carried.

The President: The next is a paper by our brother, Boykin Wright.

The Secretary: Mr. President, I have heard nothing from Mr. Wright, nor have I yet seen him here.

The President: The report of the Committee on the Condition of the Supreme Court.

W. S. Thompson: Mr. President, before that is called I move a suspension of the rules to nominate Mr. Hamilton Douglas for membership.

Mr. Mynatt: I also nominate Mr. J. M. Slaton.

R. T. Dorsey: I also nominate Mr. P. H. Brewster.

Mr. Harley: I believe it is the rule of the Association that a superior court judge is entitled to become an honorary member of this Association. Since its last meeting Governor Northen has appointed Mr. Seaborn Reese, of Hancock county, to the superior court bench of the Northern Circuit, and I move that he be recognized as a member of this Association.

The President: He is already recognized. The rules make him recognized. He is a member of this Association.

A. C. King: I would add to the nomination the name of Walter P. Andrews.

The Secretary was directed by the Chair to cast the ballot of the Association, and the nominees were elected.

The President: The report of the Committee on the Condition of the Supreme Court is next in order. Mr. Dessau will read the report, and he can vary the subject to suit himself. (See Appendix 12.)

The President: Gentlemen, what shall be done with the report?

W. M. Reese: Mr. President, after hearing this exhaustive article from Brother Dessau, it has occurred to me that something practical ought to come out of it, not simply that we should go away from here interested, but that we should take some thoroughly practical mode of giving these ideas their proper influence amongst the people. Now, sir, this question about an increase of the court has been before the people once within my own knowledge some five or six years ago. There was at that time, sir, no effort made to inform the minds of the people, and therefore it fell under that delusive cry which operated in the convention of 1877. It was this, as you and these gentlemen here present will remember, that "If these judges are overworked let them get out of the way; there are plenty of young fellows who will take their places and do their work, or try to do it." Now, let us go at this thing systematically and thoroughly. My idea is this, that this address, perhaps not in its fullness and completeness, be prepared and circulated among the people, but that it be thoroughly abstracted and all the leading features of it put together and presented in some way. It is a matter of so much importance that it should be distributed amongst the people of the State. It seems to me, sir, that if this abstract, faithful and correct and concise, was presented all through the State to the weekly press and the daily press, and all the means of communication that we have with the voters of the county, a decided influence would be felt. Now, is this practicable? It seems to me that it is. If our Secretary, after being prepared with this abstract, should take means to have it printed, and have these printed copies sent to all the attornevs the State with whom he is acquainted, and who have an interest in this thing, to get it into the weekly press, and other modes of communicating with the people, why, sir, we would have an expression of opinion from the people that would be worth something by the time the election should be held. The election is now two months off. is a question which does not seem to be exciting any particular hostility at this time from what I can hear. There is a willingness to be heard on this subject and to hear sound advice and safe information. This address embodies it all. There is no mistake about that. If this address, abstracted, cannot influence the minds of the people about it, why we had just as well quit this thing and resort to some other way of relieving the court. On account of the condition of my eyes, I cannot prepare a resolution, but I would ask the Secretary to frame a resolution expressing these ideas: that this address be abstracted carefully and concisely, and then printed, and forwarded to all members of the Association and other attorneys that he knows throughout the State, with the request to get it in the weekly press. That is my idea, and this resolution (if some gentleman will draw it up for me) I will ask the Association to act upon.

The President: Judge Reese, just pass it over for the present until we get through with the order of business and take it up again when resolutions are reached.

W. M. Reese: Yes, sir.

The President: The next is the report of the Committee on Interstate Law.

A. C. King: I move a suspension of the regular order for the purpose of electing members, and I give the name of Mr. J. B. S. Davis, of Newnan.

The Secretary, by order of the Association, cast the vote for Mr. Davis.

The President: Now comes the report on Interstate Law. Judge Branham was Chairman of that committee. The committee consists of J. Branham, I. E. Shumate, J. M. Neel, L. A. Wilson, and W. G. Brantley. Mr. Secretary, have you heard from these gentlemen?

The Secretary: I have not, Mr. President.

The President: Very well, I will pass from it. Now,

we have a fine subject. The next thing is very important, that is, ethics. The report of the Committee on Ethics is in order.

W. Dessau: Mr. President, is there any business now before the Convention?

The President: Very important business.

W. Dessau: Before that report is read I desire to make a motion that, at whatever time it suits the Chair, the Chair will appoint a committee of five to suggest to the Association the officers to be elected for the ensuing year. This motion is in accordance with the unbroken custom of the Association up to this period.

The President: Is there any second to that motion?

A. C. King: I second that motion, and I move a suspension of the rules. Carried.

The President: The committee will consist of the movant, Mr. Dessau, Judge Hillyer, Bryan Cumming, James Bishop, Jr., and H. R. Goetchius. Now you are in order, Mr. Atkinson, for your report on Ethics.

Judge S. R. Atkinson read report. (See Appendix 13.)

The President: Gentlemen, I will take the liberty of saying that I am very well convinced that a great deal of the wrong-doing of life is founded on mistake. People do not intend that way to violate principles. I am sure that there are very few lawyers that do wrong except by right intentions or under the influence of some erroneous views. There is one wrong that I have no doubt is founded on this entirely that I have heard of, but I have not known it in any actual case that came under my own observation; and it is that lawyers have reversed in some instances the order of things in reference to solicitation, instead of waiting to be solicited, to enter into relations with their clients. It is said that some of them solicit their clients to enter into these relations. Well, now, no lawyer could think



that proper any more than a maiden could think it proper to go courting. [Laughter.] It is just exactly on the same footing when you take the proper view of it. It is just as unnatural and as improper for lawyers to solicit business as it is for the ladies of the land to go out and solicit husbands. There is great danger in this matter. too. A lawsuit is a grave thing, and it ought not to take place unless it is inevitable; and instead of stirring it up and stimulating it and promoting the inception of it. lawvers ought to wait like girls do, and not go out and solicit business themselves. If that view is presented fully to the profession and kept before the professional mind, it seems to me nobody would do it. We are for the good of society. We are a sort of privileged order. We enjoy exemption from duties that others perform, such as jury duty, and we are set apart as ministers at the altar of justice, and we ought to do nothing to stir up litigation. [Applause.] It won't do. It is contrary to all right and all rectitude, and certainly no lawver would do it. I know what I say is true, and I know it will be recognized as true by all the laity. [Applause.] What shall be done with this report? It will take the same direction as the other. The next thing in order is the consideration of resolutions and motions.

A. W. Smith: Mr. President, at the request of Judge Reese, and inasmuch as I had previously introduced a somewhat similar resolution, I have reduced to writing the suggestion, and I am perfectly willing to accept this in lieu of the one I introduced earlier, provided it is satisfactory to Judge Reese, and I hope he will listen to it:

Resolved, That the report of the Committee on the Condition of the Supreme Court be condensed, digested and printed by the Secretary along with other facts on the same subject at his earliest convenience, and copies thereof mailed to the members of the Association and other lawyers throughout the State, and also to the Georgia press, both daily and weekly, with the request that said information be freely disseminated among the people, in order that they may vote intelligently upon the proposed amendment to the Constitution authorizing an increase of the Justices of the Supreme Court from three to five.

Resolved further, That the expenses of carrying out this resolution be paid out of the treasury of the Association.

I will state by way of explanation that I put in that sentence "along with other facts on the same subject," because it occurred to me that the Secretary might add something; and it might be thought advisable to insert also a resolution of the Association indorsing the resolution which, I understand, has been introduced by Judge Hillyer.

W. M. Reese: I desire to say that this resolution is entirely satisfactory to me, and therefore I offer it. I suppose (while it does not say so) it is understood that the committee who made this abstract is to be appointed by the President of the Association.

A. W. Smith: That duty is reposed in the Secretary.

W. M. Reese: Does it say so?

A. W. Smith: Yes, it says so there.

W. M. Reese: That is all right. I offer this resolution.

N. J. Hammond: Before this resolution is put, I wish to say that among those other facts to be given (and my memory does not recall whether they are omitted or not, in the ten years comparison there ought to be a comparison between the business of the court in 1877 and the business of the court now, for this reason: In 1877 the convention voted against five judges. They were so thoroughly opposed to five judges that they voted against a resolution which I had the honor to introduce (either there or in the committee, I do not remember accurately the history), that the Legislature be authorized to increase it to five. They would not even do that.

W. M. Reese: I do not know of any political opposition.

N. J. Hammond: The morning paper announces that a gentleman high in position among the Populists has said



he expected his people to vote against this proposition because it was useless. Whether that was right or wrong I do not know, but every intelligent man has the right to ask, and will ask the question, "What is the difference now and in 1877, when the convention voted against it?" Two replies are to be made. First, a comparison of the business and plus the fact that two Legislatures have voted in favor of it, the last nearly unanimously. Those things, if not in this report. I desire added.

A. C. King: Mr. President, it occurs to me to be well to put in this abstract thus: Among a great many people, especially those who are not lawyers, it does not appear how five judges would bring the relief that the overworked condition of the court demands. There is some impression that the way of doing the entire work on a case is getting together and consulting, and the whole of the court do all of the work on every case. I think the abstract should contain some explanation, intelligent to the mind, of how an increased number on the bench would aid in facilitating its business.

Burton Smith: Mr. President, it seems to me we ought to look at this more as a political question than as one of abstract right or advisability. In addressing lawyers we are addressing a willing audience, men who are always with us; and the mere sending out of these papers will accomplish very little, it seems to me. This is a political election, and if we desire to carry this election we ought to have organized a central committee and sub-committees, and conduct it as though it were a political campaign. That is what it is. It will be fought by the Third Party, I take it, from what has just been suggested. The members of our party, as a rule, pay practically no attention to it. They will hear nothing of it unless it is specifically brought to their attention. They may read it in the newspapers or not. They may read these circulars if sent to them or not; but if there are certain of our brother lawyers in each county who will see to it that the voters of that county are

urged in all proper ways to vote for this amendment I believe it will be carried. To illustrate, there will be at the polls on election day certain men, local political leaders, who go there for certain purposes with no knowledge of this matter, and no thought of it. If somebody should suggest to them the importance of this thing, they may be induced to work for it. Mr. Akin, under this present resolution, is burdened with the entire responsibility, and I offer as a substitute that a committee of five, I would suggest, be charged with the duty of circulating abstracts from this report, and other matters such as may be desired, with authority to appoint sub-committees, and to bring before the people the propriety and advisability of adopting this constitutional amendment.

D. W. Meadow: Mr. President, the matter that is to be attended to before this measure is carried, is to reach the people. It occurs to me that the best way to reach them is to use the machinery already in hand. It strikes me that whatever matter is prepared (and on that I have nothing further to say than has already been mentioned by these gentlemen), when the matter is prepared there might be a central committee, and it strikes me that the best way to reach the people is not to try to reach them through the lawyers solely. There does exist in the minds of the people or voters a very great, but yet unfounded, prejudice against lawyers as a class. That is a fact we need not ignore. If it comes as a lawyer's measure solely, there will be many voters, in my judgment, who will pay no attention to it, or who will vote against it; but if we make a fight out of it as a democratic measure, the way to do would be to use the Executive Committee of the various counties already organized, and they have men in every militia district, and we can through that machinery reach every militia district in Georgia and put these facts before the people.

I have heard it suggested that it would not be a party fight; that Mr. Watson, who is recognized as the head of the Populist party, was in favor of this measure, and I



knew nothing to the contrary until noticing a little squib in the paper already mentioned on this floor this morning. If it should come down to a party fight, we must use the party machinery to get it before the people. We must get there otherwise than simply through lawyers.

Burton Smith: Mr. President, we cannot here determine what to do, and we cannot charge our Brother Akin with the entire responsibility as to what to do. This committee of five that I suggest would, of course, be charged with the entire authority. They can go before the convention to-morrow if they want to. They can organize through the various county Executive Committees. My brother says we must not call it a lawyers' fight. Nobody else is paying any attention to it, and unless lawyers do give some attention to it, it will fall through. It is credited with being a lawyers' fight.

The President: Mr. Smith, hadn't you better wait and make it a party question as late as possible?

Burton Smith: Some committee ought to be charged with the responsibility of managing the matter, or it may not be managed. It was charged this morning that Mr. Watson had said he would fight it.

N. J. Hammond: No, I did not mean Mr. Watson. I saw in the morning paper that it was said Mr. Ellington had said he would fight it.

Burton Smith: I move that the committee which has made this report be charged with the duty of taking all legitimate measures of bringing this before the people.

W. H. Fleming: Mr. President, as a practical method of securing success with this amendment, it is barely possible we may overdo this agitation a little bit. We remember this amendment was attempted once before in a popular election, and it failed, not because there was a majority of the people in Georgia who were against it, but because the friends of the measure did not take enough

interest in it to have the tickets properly printed. In my county, for instance, if the vote in favor of the amendment had been printed upon the ticket, the voters would have given it their sanction: and I am satisfied it was the same thing all over the State. Our Constitution is peculiarly worded in this respect. It does not say a majority of the votes cast is necessary to amend the Constitution, but a majority of those voting thereon. So I apprehend that if there are but three votes cast and two of them are in favor of that amendment and one against it, that amendment would be adopted. That is the language of the Constitution. It may possibly be a matter of executive management that the best thing we could do is to stop this agitation and let it alone, and see only that these tickets are properly printed. But of course we want the judges on the bench backed by the opinion of the people.

J. A. Harley: Mr. President, coming as I do from the Tenth District, and almost surrounded by Populist counties. I want to say that unless Populist leaders are directly in favor of this, and instruct their people directly and positively to vote for it, we have got the whole Populist party to oppose as a party unanimously. As we all know. they are rigidly opposed to anything that has a semblance of an increase in the expenses of the State government. The Democrats being in authority, they are opposed to doing anything that will result in giving a single additional office to a Democrat. As Brother Fleming stated, I think that the best way to get directly at this is for the committee to see that every democratic ticket that is printed in Georgia has this amendment on it, and then if a fellow don't want to vote for it he can go to the trouble of striking it off. If it is not there, he is not likely to put it there even if he is a Democrat, unless he was very ardently in favor of the measure. Now, the Democrats will carry the State of course, and carry it by a good majority, though some people may not be so very hopeful about it. we carry it by fifty thousand this time, and if this amendment is put on every democratic ticket that is voted, it is

hardly to be expected that fifty thousand tickets are going to be scratched and thereby defeat the measure. I think myself, as has already been remarked, it would be well for the lawver to be eliminated from this move as much as we possibly can. The people will take it as a lawyers' move. Let it, therefore, be done through the democratic committee, and let us use our influence on the Populist leaders as far as possible to get their co-operation: and unless Mr. Hines and Mr. Watson, who are the gods of this party, should in any way intimate their approval of this measure so that we can use it as political capital, and not have to tell a story about it, it will be well for us to use it in our campaign arguments, and if we succeed in even impressing a few of them with the belief that their leaders say "do thus and so." we will just make that many more votes, and I think with proper diligence between now and the time of election, and on election day, that we will carry the election.

The President: Gentlemen, we are a Bar Association of the State of Georgia, and we are nothing else. We are neither Democrats nor Populists nor anything of the sort, and we have no relation to or connection with political parties, and it would be a grave error in us to join with either party. There is no politics in this, and we must not avail ourselves of any party machinery or do anything that will discriminate between parties. We are lawyers, and to that extent we are representatives of all parties and all people, and any arrangement that relates to one party or another should not be entered into. I say this because, as you know, I am here as a sort of a balance wheel. It must be non-political or I am out of place. [Applause.]

Samuel Lumpkin: Mr. President, if you will pardon me I will add just a few suggestions which are on the line of those which have just emanated from the Chair. We are in no sense a political organization, and the fact exists that there are worthy and reputable gentlemen, members of this Association, who belong to the People's party, and



who are absolutely aiding us in carrying this measure before the people. I have no disposition to run away from ns help that comes from this eminently respectable source: and I have been assured personally, by my friend. Indge Hines, who is the nominee of the People's party for governor, that he is in favor of this measure, and he has no objection to being so quoted. [Applause.] I have been informed by two gentlemen of this city that Mr. Watson has stated that he is disposed to favor the amendment, and will advocate it in his paper if he is shown that it is a proper measure. I have seen myself in a recent issue of the Daily Press (which my friend, Mr. Watson, conducts) a very friendly allusion to this proposed amendment, in which he speaks kindly of our overburdened court, and at least intimates that he will favor this amendment. I construe the statement which the Constitution had this morning as coming from Mr. Ellington who is a personal friend of mine, that he simply says they have no light before them now, and the People's party will not vote for this amendment as they now understand the matter. The thing to do is to give them light; and I believe if Mr. Ellington was informed of the startling facts and figures which Mr. Dessau has prepared. that he would be in favor of it; and for Heaven's sake don't run away from the support of this most important measure anybody in Georgia. [Applause.] I think there is a great deal of wisdom in the propositions made by my brother King as to what ought to go before the people of Georgia; there are some additional facts that should go before them. Colonel Hammond suggested one, viz., that the people ought to be reminded that two Legislatures have adopted this measure, and there ought to be some brief answer to the objections which have been suggested touching the adoption of this amendment. One is, the expense of it. The people of Georgia could in a few lines be made to see that the additional \$6,000.00 is of no consequence in comparison to the great good to be derived from the adoption of the amendment. Some have suggested

that it would take five judges longer to decide than three. There is not so much difficulty in deciding what the law of a case is as in finding out what that law is, and it can be found out quicker by five than by three; and in the labor of writing opinions the two additional judges would be of vast assistance. [Applause.]

George Hillyer: By way of showing the spontaneity of the wisdom of it, I will state that before the suggestion had been made I had prepared this resolution, which I will move as an amendment, and in logical order it would precede the resolution already offered by Judge Reese:

Resolved, That this important matter does not concern any political party more than another; but concerns the whole people, and is for the good of the whole people without regard to the party.

There we put ourselves on record in an emphatic declaration that would be an answer to anything that has been suggested.

It has been suggested that this matter we send out to the public press to be printed, and be printed in the press, and the resolution closed with the authority of the Association to pay the expenses of doing this out of the funds of the body. Of course what is meant is only the printing of these circulars and the sending of them out. There are a great many newspapers throughout the State that might get the idea they would be paid for publishing these reports in their papers; and if so that would take all the funds we may have for several years. I think it well to address to the press of the State a request to publish this matter.

Then, with some diffidence, I suggest this further amendment to our action on the subject. If we will notice the report of the committee by Mr. Dessau and Judge Reese's resolution, we nowhere embody an emphatic declaration of the opinion of this Association as to how the people ought to vote on this subject. It is all assumed, and very distinctly implied, but we nowhere say in emphatic words that we recommend the adoption of this amendment. Now, the resolution I offered on yesterday does that.

A. W. Smith: Judge Hillyer, you perhaps did not understand me. I stated that in writing the original resolution provided for the introduction of other facts, having in my mind principally the resolution to which you refer, and I have no doubt that the Secretary in his wisdom will include that in the digest that he will prepare. I think also your criticism is perhaps hypocritical as to the language of the expenses. The language is that the digest be printed and mailed to these various people, accompanied by the request that they give it such publicity as they choose.

I am opposed to the substitute which my namesake and brother at the bar proposed. I do not conceive that we have the authority under our Constitution and By-laws to be raising anything for political purposes to conduct political campaigns. We cannot do anything more than give the people of the State (for whose benefit at least this is designed) intelligent information on this question; and after they have that information and are enabled to act intelligently, if they vote it down, it is their funeral and not ours: and I do not concede as matter of fact that it is a lawyers' controversy. We are simply administering the rights of the people, and its administration may affect their property and their liberty and their lives; and I do not, for one, favor the action contemplated by Mr. Smith's resolution, that this Association should enter into a political campaign for any purpose, and I am opposed to his suggestion.

Porter King: I move a suspension of the rules, and propose for membership Mr. D. W. Green of Atlanta.

By order of the Association, the Secretary cast the vote of the body for Mr. Green.

On motion of W. B. Hill, the Association adjourned till half past 3 o'clock this afternoon.

## AFTERNOON SESSION.

The Association was called to order by the President.

Burton Smith: Mr. President, I desire to withdraw the resolution which I offered this morning as a substitute for Judge Reese's resolution.

George Hillyer: I am requested by Judge Reese to state that upon comparing the different resolutions, he is willing to accept some other suggestions that have been made, and he desires me to offer for him the paper which I will read, as a substitute for all the pending propositions, and as coming from Judge Reese:

Resolved 1st, That the pending amendment to the Constitution of this State, by which it is proposed to increase the number of judges from three to five, is wise and proper and, in the opinion of this body, should receive the indorsement and support of the people at the approaching election.

Resolved 2d, That the important matter embodied in the foregoing resolution does not rest with any political party more than another, and concerns the whole people, without regard to party.

Resolved 3d, That the report of the Committee on the Condition of the Supreme Court be condensed and printed by the Secretary, along with other facts pertaining to the subject, at his earliest convenience; that copies thereof be mailed to such persons throughout the State as may be deemed likely to take an interest therein; that all the newspapers of the State, both daily and weekly, and without regard to party, be requested to publish the same to the end that said information may be freely disseminated among the people, so that they may vote intelligently upon said proposed amendment.

Adopted.

Burton Smith: Mr. President, I offer this resolution:

Resolved 1st, That the expenses of printing and mailing the circulars called for by action of this body had at the present session, on the subject of proposed amendment to the Constitution increasing the number of Supreme Court judges from three to five, be paid out of the Treasury of the Association; and that the Secretary of this body be vested with the necessary discretion, and charged with the duty of framing said circular, and taking as a basis the formal action of the body already had, and supplementing the same with necessary and appropriate further in-

formation, facts and statistics, for a full and correct understanding of the subject by the public at large.

Resolved 2d, That a committee of three be appointed by the President of this Association, whose duty it shall be to co-operate with the Secretary in promoting, in any proper manner, the adoption of the proposed constitutional amendment, the committee to be composed of the following gentlemen: \*

Adopted.

The President: Is there any other resolution or motion that any member desires to have taken up?

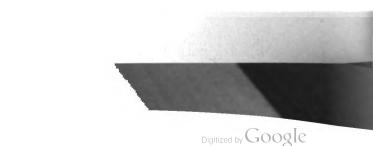
J. C. Jenkins: Mr. President, I do not know what has become of the resolution that Colonel N. J. Hammond said he intended to introduce at a later stage of this meeting. I do not know whether he has introduced it or not. I have a resolution which I intended, when he did introduce his, to offer as a substitute, or in the nature of an amendment. I offer it, of course, with considerable diffidence, more in the nature of a suggestion than anything else, and for consideration by the distinguished and able members of this Association who are better capacitated to deal with the subject than myself; but I offer the resolution for what it may be worth by way of suggestion to the Association:

Resolved, That it is the sense of this Association that the laws regulating admission to the bar in this State should be so amended as to require applicants to present their petition in writing to the Supreme Court of the State during one of its sessions, and that the applicant, after having stood a satisfactory examination by or before that court, should be entitled to plead and practice law in all the courts of this State on compliance with the other legal requirements now of force governing such admission.

Resolved 2d. That a committee of five be appointed for the purpose of procuring legislative enactment substantially in accordance with the above resolution, or other needed legislation upon the subject.

I offer this resolution, Mr. President, in anticipation, of course, that the proposed amendment of the Constitu-

<sup>\*</sup>This committee was subsequently appointed by the retiring President, and consists of Burton Smith, Esq., John S. Candler, Esq., Albert Howell, Esq., to which the retiring President, on his own motion, added the name of Hon. George Hillyer.—[Editor.]



tion increasing the number of judges of the Supreme Court from three to five will be ratified by the people: otherwise it would doubtless strike you all as being altogether out of order, and altogether improper, because that court is now overburdened with business. It seems to me, if you will pardon me. Mr. President and gentlemen. for the humble suggestion, that some change in the present system is certainly badly needed. It would hardly seem necessary to say anything to impress that fact upon gentlemen of this Association. In support of this resolution I may be permitted to say that I know that in one or two instances in other States that this has worked admirably, and I cannot see why it would not be at least an improvement upon the present mode or the present system of admission to the bar. I do not know exactly what was proposed by Colonel Hammond's resolution, but so far as I can understand it, the proposition was to have an examining board. You will pardon me, Mr. President, for saving again that that would hardly be an improvement, it seems to me, upon the present system. It would seem to me to be jumping out of the frying pan into the fire. trouble, it seems, about this present system, is that where a committee is appointed by the superior court. as at present. they perform their duty in a somewhat perfunctory manner; and the question arises that if you had an examining board, unless that board was compensated for their services, they would fall into the habit, no doubt, of performing their duties in a perfunctory manner: and doubtless you will all agree with me that it would not be wise at this time, when we are so doubtful that the number of judges will be increased from three to five, to ask for any legislation which requires the payment of more money out of the treasury of the State. So that, unless you made this office remunerative, they would likely fall into the habit of performing their duty in an indifferent sort of a manner. I want to say in conclusion that there cannot be a gentleman of this Association more impressed with the idea of the absolute necessity of some change or other in



the present system than myself. Certainly a change is needed. I offer this resolution, Mr. President, and hope that I may have a second to it.

The President: Is there a second to the resolution offered by the gentleman?

Walter B. Hill: Mr. President, it was my impression that the matter was discussed very fully yesterday afternoon, and in view of other matters coming before the Association this afternoon, I doubt if there be time for a full consideration of this resolution. I therefore move that it be referred to the standing Committee on Legal Education for a report at the next session. Carried.

The President: Any more resolutions or motion? (A pause.

On the program the next business in order is a "Symposium on Woman at the Georgia Bar." Is Mr. Bryan Cumming present, or any one representing him, or has he sent any paper, Mr. Secretary?

The Secretary: He sent no paper, but I understood that he was here this morning.

The President: He is not present now. Mr. B. F. Abbott is next.

The Secretary: Mr. Abbott promised a paper, but I have not had the pleasure of seeing the gentleman at the meeting of the Association, nor have I heard anything from him lately.

The President: H. A. Mathews is next.

The Secretary: Mr. Mathews has promised in writing a paper, but he has not sent one to me.

The President: These promises ought to be put in suit. [Laughter.] Mr. Thomas J. Chappell, you are registered here for a paper or oral discussion upon this subject.



Mr. Chappell: I will state that my name is there by mistake, and I requested the Secretary to erase it. The Secretary wrote to me in regard to this matter, but the circumstances were such I told him it would be impossible for me to comply, and as matter of fact I have not prepared a paper, nor have I had time or opportunity for preparing a paper and presenting the matter to the Association at this time in the way it should be presented. I hope this matter may be discussed, and possibly I may take some part in the discussion of it after the papers have been read. I did not know that my name was still on the program.

The Secretary: Mr. President, I owe Mr. Chappell an apology. He did write at first promising a paper, but since I came here, after I prepared that list, he told me that circumstances had been such that it was impossible for him to prepare a paper. I promised to erase his name from the list, but I forgot to do it.

The President: Mr. Chappell, we will have to excuse you, but we will get something now. Burton Smith is next.

Burton Smith: Mr. President and gentlemen of the bar, I prepared a paper of less than one page. I thought I would follow others. I have simply laid down two or three dry statements or facts which present my views upon the subject. Papers were then read by Messrs. Burton, Smith and A. H. Davis. (See Appendix 14.)

The President: Volunteers are called for. Any one desiring to discuss this question will be heard for five minutes.

W. W. Gordon, Jr.: Mr. President, a college professor used to warn us when we were boys that there were three things we had to beware of, a woman that wanted to get married, a woman that wanted to get unmarried, and an old maid that did not know what she did want. [Applause.] Of the first class I expect they would be engaged



in looking after their own friends; a woman that wanted to get unmarried would be engaged in looking after her husband's friends. That would leave only the third class who would want to follow the practice of law. Say, the city of Atlanta, for instance, wanted to erect a monument to woman, do you suppose you would follow the idea suggested by *Puck* in a late paper where they had a monument erected to the woman that first wore pants? That would be a very extraordinary monument indeed to put alongside the lamented Henry Grady. The competition is too sharp. The bar is well filled already with men. The field we have traversed is very much like the statement of John Randolph of Virginia, that the soil was poor by nature and damned by cultivation. [Laughter.]

"In my youth, the garrulous old man said,
I argued the law with my wife,
And the physical strength it gave to my jaw
Will last the rest of my life."

[Laughter.]

The President: Is there nothing more to be said on this subject, gentlemen? It is a very good subject to get married on; I have tried it. [Laughter.]

L. Z. Rosser: Mr. President, these boys around me insist that I must say something, and they say I shall do it as an expert. I decline to do that. What little experience I have on that line at all, I shall keep from this bar as long as possible. I have never yet made a national issue of anything I know of in that line, but I have some very serious and some very strong views on this question. I repudiate utterly what my Brother Smith has said upon this question. It will not bear the light of investigation, surely, upon the part of anybody who wants to see this country keep its high chivalric regard for woman. It won't do. It is ruinous in practice. We cannot stand it. I believe that solemnly. My brother says over there we are overcrowded. We have too much of a certain kind, and we ought to get rid of that. God Almighty so fixed

it up when he arranged this business that women cannot put in all their time at any occupation. [Laughter.] We will have several days in a month the start of them in spite of everything that can be done. I have no fear on that question or on that line. I am not afraid of it, but I do fear the effect it will have upon our women. That is the thing I am afraid of.

My brother says they will get before the people anyway. They do. But there are some departments of life. God grant, in which they never get before the people. may sing in the choir, and if the preacher is not too dull I will be there and look and listen; but I have heard divorce suits, legitimate business, tried that I think would be ruinous to the modesty of any good woman; and I see in the courthouse every day of my life things that I think would add neither to her modesty nor to her worth, as a mother or a wife. I think the law an honorable and high calling, but its practice involves some things that will not add very much to that capital which a woman certainly ought to have in a large proportion-modesty. They say: "Oh, well, a good woman can stand anything." Well, I do not know about that. I doubt it. I would rather that people I am near and dear to would not risk it. dence meant for the men of the world to do the work and support the women. That is the ideal, the biblical plan; that is the chivalric plan which appeals to all men; and the fact to-day that our young men have social reasons or other reasons for traveling along through life by themselves, often fit to be married and not married, and when fit often unwilling to marry, has nothing to do with it. may give an invitation to them to crowd into the bar, and I have no fears that it will damage us, but in my solemn judgment it will damage the sex, and we will see instead of having Southern women as wives, as mothers, as modest maidens, and as matrons, we will have a crowd of bluestockings that will be a disgrace to this country. [Applause.]

The President: What do you think of this as a Georgia attitude: For the men to keep the bar open to the women, and for the women to keep themselves out of it? [Laughter.] Don't you think that would do? Let's recognize the theory that all occupations are open to them, but let their own sense of propriety and their interest govern them in staying out.

L.Z. Rosser: I am willing to adopt that plan for the women who have the instinct to stay out, and then to keep the others out.

The President: It won't hurt us for them to come in. [Laughter.]

Hanson Merrill: Mr. President, if I may be pardoned a word in this matter I think that Brother Smith and Brother Rosser are each actuated by very high and chivalrous motives in what they say. I agree with Brother Smith; I do not, therefore, agree with Brother Rosser in his conclusion. His idea of the men taking care of the women is a very noble, right and proper one, but he fails to consider woman who is equal with man in intellect, and woman dependent upon her own exertions for support, and woman with pride and ambition, and woman with a soul that will rise above being content with charity, or with being a burden upon any man, even though he be her brother. Let us open the bar to the women of Georgia. Let us not take from any home any wife or mother. Home is the grandest institution on earth, and woman the proper I would not take from her any of the loftv sentiment that our Southland throws around her, but I do sympathize with those women who have to take care of themselves. I want every field of employment thrown I do not fear that they will come to the open to them. courthouse and be disgraced by coming into dirty and disreputable cases. I will ask my Brother Rosser if he has not refused many a case because he thought it beneath him: and I would ask if a woman would not refuse any case that might bring in anything that was dirty, disrepu-



table or unpleasant for her to have anything to do with. Let the women refuse cases that are objectionable to them. If the courthouse is a place where dirty jokes are told, where too much looseness of conversation occurs, for God's sake let us have the presence of women, if it may help to ennoble and elevate it; and let us, out of kindness for them and sympathy with them, throw open this field, as almost every other is open to them, and bid them welcome, and extend them a helping hand when they see fit to enter it. [Applause.]

W. H. Fleming: Mr. President, I believe in the final triumph of justice and right. Historically speaking, perhans we have not arrived at the stage of development that would justify us as practical men in making any statute upon such a subject as this: but I believe that no man has ever been able to form a logical syllogism against what is properly known as woman's rights; and inasmuch as no man has ever been able to make a logical argument against the justice and right of their cause, I believe their cause will triumph. When or how it will triumph, I can-Now, the argument upon that subject goes not tell. only to this extent: it is not that we should force women into public life: that would be unjust. It does mean that we should strike off the shackles and allow her to have her own natural developments. She has a Godgiven right to develop all her powers, physical, mental and spiritual, subject only to the conditions of sex that God has placed upon her. I believe we should let her alone, let her develop along her own line. There may be places where we cross from one to the other, but the gen-It does seem to me eral line will be well marked out. that if justice and equity are ever to prevail, the time must come when these shackles must be stricken. That is all, simply strike the shackles off and let her have her own naturál wav.

W. R. Leaken: Mr. President, we have not polled the vote of Chatham county on this question here, but I am



quite sure we are solid on it. There is one factor that seems to be neglected in this discussion, and that is with woman we necessarily connect the idea of romance, the idea of something we do not know anything about. If, for instance, we should enact a law by which the women of Georgia, or other women, may enter the bar, I do not think many women in Georgia would take the benefit of it; but we might have an immigration here of a large number of other women that might come in, and a certain amount of romance might be removed from our lives, which has a great deal to do with our own happiness. I heard my Brother Rosser say that a woman's rights convention will meet here this year. I am not responsible for that.

L. Z. Rosser: I am not responsible for it either.

W. R. Leaken: Suppose the two sexes go upon opposite sides of the case. Now, we know pretty well that there is going to be a collision, and a connection is going to be cut off. It seems to me that it is a very serious question to allow a woman to practice at our bar. It opens up so many avenues whereby women is absolutely taken from the position in which we hold her—that perfect life in which all the poets and all the historians and every one have held her.

The greatest difficulty of the case is we won't know "where we are at." I don't know what the comparative population of men and women in Georgia is, but we certainly have not got to the point, as out West, where the men outnumber the women. So I think the women will be taken care of. Men and women will get to each other somehow. They will be taken care of some way, and I do not see the necessity for their admission to the bar now. If the women from the outside States want assistance, we will give them assistance. We will do anything; we will give them a book to carry around [laughter], and they are very effective in that. As the poet has said:

"Ah, sad are those who have not loved, But far from passions, tears and smiles, Drift down a moonless sea Beyond the silvery shores of fairy isles.

"But sadder far are they whose longing lips Kiss empty air and never touch The dear warm mouth of her he loves, Wanting, wasting, longing much.

"But fine as amber, sweet as musk,
Are they who walk
Hand in hand from dawn till dusk,
Each day nearer Paradise."

But that is not law. [Applause.]

Burton Smith: Mr. President, I had not intended to take any further time in the discussion of the question. but the remarks of Mr. Rosser, it seems to me, call for reply. My brother goes very deeply into the mystery of dirty divorce suits. I do not think ladies are necessarily called upon to take them up, and I feel sure they would not. They could let them alone. They are not called upon to read the daily press in which such things appear all the time. Why, gentlemen, that is absurd. As the President suggested, let us give them permission to come in, and let them stay out, as they most certainly will, where they can. Brother Rosser says woman will be supported. Certainly they should be, but we all know cases where they are not supported. They will not rush into our profession. I suppose the Belva Lockwoods would come; but, as I suggested, they can make more disturbance elsewhere than they could there. They can make more disturbance trying to get in than they would after they were in. There is nothing in his point that it would lower the dignity of the sex. The dignified, womanly women, with the high ideal which men always have for them, would stay out unless they were forced in by arduous circumstances, and then I know our brethen of the bar would always treat them with such respect that they would not have their dignity offended in the slightest way.



L. Z. Rosser: We live in the South. There are almost as many negro women in Georgia as white women. A negro woman at the bar would be a magnificent spectacle. It would be poetry in large doses: it would be magnificent style to have them. If we have white women, we would have negroes too. With the mistress on the one side, and the cook on the other, and with a large size divorce suit on hand, it would be magnificent. It would be a spectacle worthy for the painter, and he would have to have large painting capacity at that. To have a high-strung Southern man on one side, and a great big black negro woman on the other, you would then have dirtiness indeed. It won't do. I simply used the suggestion about that horse about which something was said, on the idea that it won't do to say woman can go into everything; you must draw the There are some places they cannot go. We cannot let them vote

The President: We will pass now to the election of officers. That is solid, practical; the other is ideal. We will hear the report of the Committee on Nominations.

W. Dessau: Mr. President, the committee beg leave to place the following names in nomination:

For President—Wm. H. Fleming, Augusta.
First Vice-President—George Hillyer, Atlanta.
Second Vice-President—L. C. Levy, Columbus.
Third Vice-President—W. G. Charlton, Savannah.
Fourth Vice-President—J. H. Martin, Hawkinsville.
Fifth Vice-President—C. A. Turner, Macon.
Secretary—John W. Akin, Cartersville.
Treasurer—Z. D. Harrison, Atlanta.

Executive Committee—Alex. W. Smith, Chairman, Atlanta; Burton Smith, Atlanta; W. B. Hill, Macon; A. H. MacDonell, Savannah; and the Secretary and Treasurer ex officio.

W. Dessau: As the Secretary of the Association is one of the nominees, I move, Mr. President, that the report of the committee be adopted, and that the nominees be declared officers of the Association for the ensuing year.

The President: Is that a constitutional way?

W. Dessau: The election must be by ballot. I will amend my motion, and move that the President of this Association be requested to cast the ballot of this Association for the nominees.

On motion, the report of the committee was received and adopted, and the President of the Association cast the ballot for the nominees and announced their election as nominated.

The President: Mr. Secretary, you may record my vote in behalf of the Association for this ticket, the whole ticket. I vote the whole ticket. [Laughter.] These gentlemen are elected. Is there any further business for this Association?

W. B. Hill: Mr. President, it is usual for this Association to appoint delegates to the American Bar Association; at least where information comes to the Association that there are any gentlemen from Georgia who will probably attend the session of the American Bar Association. I state, by way of information, that I have learned, not from the gentlemen themselves, but from others, that Judge Hillyer and Mr. Goetchius, of Columbus, will probably be in attendance at Saratoga at the session of the American Bar Association. I think we are entitled to three delegates, and I move the president appoint three delegates, if he hears of that number who will go. Carried.

The President: Will that be done by the outgoing or incoming President? The incoming, I suppose. Mr. Fleming, you will have this jurisdiction to exercise.

W. H. Fleming: When am I expected to appoint them?

The President: To-morrow or any future day. My jurisdiction expires to-day.

J. A. Harley: Mr. President, shall it be determined at this meeting where the Association will meet next year?

The President: That seems to have been left to the Executive Committee

- W. B. Hill, referring to the report of the Committee on Judicial Administration and Remedial Procedure (see Appendix 5), moved that this Association adopt the recommendation of the committee.
- W. H. Fleming: I would ask Mr. Hill if he would not amend that motion by adding to it that the Secretary be requested to send the resolution to the codifiers. I think that a great many errors can be rectified in that way, so when the Code is printed in a new volume, it may not be amended immediately.

The President: Gentlemen, the motion is to adopt the report of the committee, so far as its recommendation is concerned, with the form of a resolution, and to communicate a copy of that through the Secretary to the codifiers. All in favor of the motion will say aye; all opposed to it will say no. The ayes have it, and the motion prevails. Mr. Secretary, in recording that put it in such shape as will present the idea.

A. C. King: In the report of the Treasurer there is a recommendation that the proposition which was made or adopted at the last meeting of the Association, allowing parties who were in arrears to reinstate themselves by payment of a certain sum, be continued on the same terms this year as was adopted last year. In view of the reasons presented by the report of the Treasurer, it occurs to me that is a very proper recommendation, and I would move a continuance for the coming year of the permission extended by the Association last year, \$10.00 on account of back dues added to dues for the current year.

The President: It is moved and seconded that the same grace be extended to our slow brethren for the current year as was extended to them last year in reference to the payment of their dues. Carried.

The Secretary: Mr. President, this Association is greatly indebted to the leading newspapers of the State. In no instance, since I have had the honor to be Secretary of the Association, have any of the daily papers of the State refused to comply with any requests that have been made. They have not only published notices of the meeting, but they have written editorials, whenever requested, favoring the Association and bidding God-speed to it in its efforts; and therefore I think it eminently proper that we should do toward them what we are forbidden to do in regard to any member of our Association, viz., express our appreciation of what they have done for us. I therefore offer this resolution:

Resolved, That the thanks of this Association be, and they are hereby, specially tendered to the Press of Atlanta for their full reports of our meeting, and their kind references to this Association.

The motion was unanimously adopted.

On motion of N.J. Hammond, the Convention adjourned sine die.



## APPENDIX 1.

### REPORT OF EXECUTIVE COMMITTEE.

#### Mr. President:

The Executive Committee of the Association report that the following program has been prepared for business at the present annual meeting:

#### FIRST DAY.

- 1. Roll-call and reading minutes.
- 2. Report of Executive Committee.
- 3. President's address.
- 4. Treasurer's report.
- 5. Election of members.
- 6. Report of Committee on Jurisprudence and Law Reform.
- 7. Symposium on our Judicial System. Is it defective? If so, wherein?
- 8. Discussion of above subjects by members, each limited to five minutes.
- 9. Report of Committee on Judicial Administration and Remedial Procedure.
  - 10. Paper by W. C. Glenn, Esq.
- 11. Report of Committee on Legal Education and Admission to the Bar.
- 12. Symposium on What Should be the Requirements for Admission to the Bar.
- 13. Discussion of above subject by members, each limited to five minutes.
  - 14. Introduction of Resolutions and Motions.
  - 15. Report of Committee on Grievances.



- 16. Report of Committee on Federal Legislation.
- 17. Symposium on the Insolvent Trader's Act.
- 18. Discussion of the above subject by members, each limited to five minutes.

#### SECOND DAY.

- 19. Report of Committee on Memorials.
- 20. Paper of Boykin Wright, Esq.
- 21. Report of Committee on the condition of the Supreme Court.
  - 22. Report of Committee on Interstate Law.
  - 23. Report of Committee on Ethics.
  - 24. Consideration of Resolutions and Motions.
  - 25. Consideration of Committee Reports.
  - 26. Symposium on Woman at the Georgia Bar.
- 27. Discussion of above subject by members, each limited to five minutes.
  - 28. Election of officers.
  - 29. Miscellaneous business.
  - 30. Adjournment.

We have examined the Treasurer's report and his vouchers, and find the same correct.

In pursuance of article 4 of the Constitution and By-laws, the committee, during the vacation of your body, have elected as members of the Association the following gentlemen:

R. B. Harley, Sparta, Ga.; Sigmund Nussbaum, Bainbridge, Ga.; C. W. Fulwoode, Tifton, Ga; John W. Bennett, Jesup, Ga.; A. L. Bartlett, Brownsville, Ga.; H. C. Kittles, Sylvania, Ga.; Jack J. Spalding, Atlanta, Ga.; A. H. Russell, Bainbridge, Ga.; John Milledge, Atlanta, Ga.; W. C. Glenn, Atlanta, Ga.; D. W. Krauss, Brunswick, Ga.; Bolling Whitfield, Brunswick, Ga.; Robert Zahner, Atlanta, Ga.; J. W. Haygood, Montezuma, Ga.; E. C. Kontz, Atlanta, Ga.; Vassar Woolley, Atlanta, Ga.; E. L. Scales, Waynesboro, Ga.; Cuyler Smith, Atlanta, Ga.; Jos. Hansell Merrill, Thomasville, Ga.; D. W. Meadow, Danielsville, Ga.; Chas. T. Hopkins, Atlanta, Ga.; O. H. B. Bloodworth, Forsyth, Ga.; James Calman, Jr.; T. R. R. Cobb, Atlanta, Ga.

The committee have arranged for the annual banquet at the Kimball House, on Tuesday night, July 31, 1894. The members are requested to meet in the Kimball House parlors at 8 P. M. promptly.

ALEX. C. KING, Chairman.

## APPENDIX 2.

## TREASURER'S REPORT.

ATLANTA, GA., July 31, 1894.

To the Georgia Bar Association, at its Eleventh Annual Meeting:

At the last meeting of this Association authority was given to remit all back dues in excess of ten dollars, on payment of that sum and dues for the current year by any member in arrear on This proposition, with respect to many, account of annual dues. was considered a liberal concession. Its object was to reinstate a large number of good fellows to active membership. who have failed to avail themselves of the opportunity offered are probably the victims of hard times, high money and high tariff, wreckers of fortunes, and in many instances of corporate Such victims should not be abandoned to professional Let them be again invited to return—persuasively and persistently invited—until every worthy brother has been permitted to again enjoy the rich feasts annually prepared for them. Gently tell them that their copies of our report, within the covers of which are to be found the best products of professional genius and learning, will be withheld until called for, and if this does not "fetch 'em," then send the report to them, modestly saying, it is too good to be withheld, and timidly requesting a remittance therefor. To those who have been absent more than two years, renew the invitation extended last year.

With the above recommendations your Treasurer herewith submits a statement of account showing receipts and disbursements, with vouchers, during the past year; also appended hereto is a list of members, with account of each for annual dues.

Respectfully submitted,

Z. D. HARRISON, Treasurer.

## TREASURER'S ACCOUNT.

		ance from last report llected since " "		\$	1,113 9 <b>3</b> 0	
				\$	2,043	96
Ву	voucher	No. 1\$	200	00		
"	"	No. 2	2	00		
"	+46	No. 3	146	16		
"	"	No. 4	11	25		
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"	44	No. 7	1	75		
• •	"	No. 8	25	00		
"	"	No. 9	10	00		
	* "	No. 10	16	20		
• •	"	No. 11	25	75		
"	"	No. 12	3	50		
• •	"	No. 13	2	25		
"	"	No. 14	23	25		
"	"	No. 15	1	<b>50</b>		
"	"	No. 16	401	33		
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	Balanc	Δ		-	853	5.9

The foregoing report audited and approved by the Executive Committee. July 30, 1894. ALEX. C. KING, Chairman.



	DUES.			
NAME.	Paid.	Unpaid.		
Abbott, B. F.		\$ 15 00		
Abbott, B. F	5 00	,		
Akin, J. W	5 00			
Allen, J. Y	5 00	1		
Anderson, Clifford	5 00			
Anderson, C. L	15 00	İ		
Andrews, W. P		5 00		
Arnold, F. A		25 00		
Arnold, Reuben		25 00		
Arnold, R. R		5 00		
Ashley, D. C		25 00		
Atkinson, S. R	15 00	1		
Atkinson, T. A		10 00		
Bacou, A. O	5 00	1		
Barnett, S	5 00	ŀ		
Barrow, Pope	5 00			
Bartlett, A. L	5 00			
Bartlett, C. L		5 00		
Basinger, W. SBattle, C. E	5 00			
Battle, C. E	10 00			
Bayne, M. G		10 00		
Beck, E. W		20 00		
Beck. M. W		15 00		
Bennett, J. W	<b>5 0</b> 0	ļ		
Berner, R. L	10 00	5 00		
Billups, J. A	5 00			
Bishop, Jas. Jr	5 00	1		
Black, J. C. C	5 00			
Blandford, M. H		25 00		
Bloodworth, O. H. B	5 00			
Blount, J. H., Jr		5 00		
Boynton, J. S	10 00			
Branham, J	5 00			
Brantley, W. GBrewster, P. H	5 00			
Brewster, P. H		5 00		
Brown, J. L	5 00	1		
Burnett, W. B.		10 00		
Bush, I. A		10 00		
Calboun, Pat		15 00		
Calhoun, W. L	15 <b>0</b> 0			
Callaway, E. H	10 00			
Calman, Jas., Jr	5 00	1		
Cameron, H. C		20 00		
Cameron, L		25 00		
Candler, John S	5 00	1		
Carson, A. A		10 00		
Chappell, T. J	5 00	10 00		
Charlton, W. G		5 00		
Chisholm, W. S	5 00	1		
Clarke, M. J	5 00	1		
Clifton, Wm	15 00	1		
Cobb, A. J	5 00	1		

Paid.   Paid.   Paid.   Cobb, T. R. R.   \$   Cohen, C. H.   Cohen, E. A.     15 0   Cooledge, A. F.   5 0   Cooledge, A. F.   5 0   Cooledge, A. F.   5 0   Cooper, J. R.     Cotten, J. A.   5 0   Crawford, Tol. Y.   Crowatt, A. J.   Cumming, B.   5 0   Cumming, J. B.   5 0   Cumming, J. B.   5 0   Cunningham, H. C.   5 0   Cutts, E. H.   Dabney, W. H.   Dasher, A.   Davis, A. H.   10 0   Davis, B. M.   5 0   Davis, J. B. S.   5 0   Custa, J. F.			
Cohen, C. H. Cohen, E. A. Colville, F	1	Unpaid.	
Cohen, C. H. Cohen, E. A. Colville, F	1 4	5	00
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Colville, F		10	
Cooledge, A. F	0	10	00
Cooper, J. R. Cotten, J. A. Cotten, J. A. Crawford, Tol. Y Crovatt, A. J. Cumming, B			
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Fite, A. W.       5 0         Fleming, W. H       5 0         Fort, Allen       10 0         Foster, F. G.       10 0         Foute, A. M.       Fraser, W. W.         Freeman, Davis       5 0         Freeman, M. R.       5 0	0		
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Foute, A. M. Fraser, W. W. Freeman, Davis		25	00
Fraser, W. W			00
Freeman, M. R			00
Freeman, M. R	0	-	3.0
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Fulwood, C. W 5 (	0	9	-0
Ganahl, Jos		5	00
Garrard L. F.			00
Garrard, L. F	0 1	9	50

#### NAME.

NAME.		
	Paid.	Unpaid.
Gary, W. T.	\$	\$ 10 00
Gilbert, S. P	5 00	5 00
Giles, A. S.	0 00	10 00
	5 00	10 00
Glenn, J. T	3 00	5 00
Glenn, W. C	5 00	3 00
Goetchius, H. R	5 W	15.00
Goode, S. W	10 00	15 00
Goodyer, C. P		
Gordon, W. W., Jr	5 00	F 00
Grace, W. J		5 00
Graham, E. D.		5 00
Green, D. W		5 00
Griggs, J. M.		20 00
Grimes, T. W		15 00
Guerry, DuPont	<b>5 00</b>	
Gustin, G. W.		10 00
Haden, C. J	5 00	
Hall, J. I		10 00
Hall, J. H		25 00
Hamilton, H		5 00
Hammond, N. J	5 00	1
Hammond, T. A., Jr.	5 00	
Hammond, T. A., Jr. Hammond, W. M.	10 00	
Hammond, W. R	5 00	
Harley, J. A	5 00	15 00
Harley, R. B	5 00	i
Harris, Marion		15 00
Harris, Nat		5 00
Harrison, Z. D	5 00	
Hatcher, S. B		20 00
Hawkins, E. A	5 00	-0 00
Haygood, J. W	5 00	}
Haygood, W. A.	0 00	15 00
Hill, B. H	15 00	10 00
Hill, C. D	30 00	25 00
Hill, H. W	5 00	
Hill, W. B	5 00	
Hillyer, Geo.	10 00	
Hitch, 8. W	10 00	25 00
Hobbs, R	10 00	20 00
Hodges, R	10 00	5 00
Holton, G. J	5 00	, , ,
	3 00	10 00
Hood, A	E 00	10 00
Hopkins, C. T	5 00 5 00	1
Hopkins, J. L.		I
Howell, Albert, Jr	5 00	
Hutchins, N. L., Jr	5 00	l
Jackson, H	5 00	05.00
Jackson, W. E	10.00	25 00
Jenkins, J. C	10 00	5 00
Johnson, R	5 00	5 00
Johnson, W. G		20 00

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NAME.	Paid.	Unpaid.	
Jones, M.	8	\$ 15 00	
Jordan, J. T	•	15 00	
Kibbee, C. C		10 00	
Kiddoo, W. D		15 00	
King, A. C	15 00		
King, P	5 00		
Kingsbery, S. T.	5 00		
Kittles, H. C		5 00	
Kontz, E. C	5 00	1	
Krauss, D. W	5 00		
Lamar, J. R	5 00		
Latham, T. W		10 00	
Lawson, T. G		25 00	
Lawton, A. R	5 00	ļ	
Lawton, A. R., Jr	5 00	!	
Leaken, W. R	5 00	ł	
Lester, R. E.	5 00		
Levy, L. C	5 00		
Lewis, H. T.	5 00	İ	
Little, J. D		20 00	
Little, W. A		15 00	
Lumpkin, E. K		15 00	
Lumpkin, J. H. (Atlanta)	5 00	ļ	
Lumpkin, J. H. (Americus)	<b>5 0</b> 0		
MacIntyre, A. F., Jr		10 00	
Mackall, W. W	<b>7</b> 00	5 00	
Martin, E. W	5 00	5 00	
Martin, J. H	5 OC	10.00	
Mathews, H. A		10 00	
McAlpin, Henry		10 00 20 00	
McCord, C. Z	5 00	20 00	
McDonald, J. C	10 00	1	
McLaughlin, B. F		10 00	
McLendon, S. G		25 00	
McMichael, M		5 00	
McNeill, J. M.		5 00	
McWhorter, H		15 00	
Meadow, D. W	5 00	1 40 00	
Meldrim, P. W	0 00	5 00	
Mercer, G. A	5 00	"	
Merrill, J. H	5 00	i	
Meyer, A. A	10 00		
Milledge, John	5 00	1	
Miller, F. H.			
Miller, W. K	5 00	1	
Minis, A		1	
Mobley, J. M		20 00	
Morgan, T. S., Jr		10 00	
Morrison, W. E		25 00	
Munro, G. P	1	15 00	

·	DUES.			
NAME.	Paid.	Unpaid.		
Mynatt, P. L	\$	\$ 25 00		
Napier, G. M	5 00	-		
Neel, J. M	5 00	1		
Newman, Emile	5 00			
Nottingham, W. D		5 00		
Nussbaum, Sig	5 00			
O'Byrne, M. A	<b>5 0</b> 0	ļ		
Oneal, Jas. F	5 00			
Pace, J. M	5 00	1		
Palmer, H. E. W		25 00		
Park, J. W	5 00			
Pate, A. C		10 00		
Payne, J. C	5 00			
Peabody, F. D	5 00			
Peeples, H. B	5 00	Ì		
Peeples, H. C	0 00	5 00		
Pottle, J. E		25 00		
Preston, J. W		10 00		
Drice W D		10 00		
Price, W. P	10 00	10 00		
Proudfit, A				
Reese, M. P	5 00	1		
Reese, W. M	5 00	05 00		
Rockwell, T. D		25 00		
Rogers, R. L		15 00		
Rosser, L. Z.	15 00			
Rountree, D. W.		10 00		
Russell, A. H	5 00			
Russell, D. A		5 00		
Sandwich, M. H	5 00	1		
Scales, F. L	5 00			
Schley, J. S	5 00			
Seidell, C. W	5 00			
Sessions, M. M	5 00			
Shumate, I. E		5 00		
Simmons, W. E	5 00			
Slaton, J. M		5 00		
Smith, A. W	15 00	1		
Smith, Burton	5 00	1		
Smith, Cuyler		5 00		
Smith, E. A.		5 00		
Smith, Hoke		15 00		
Spalding, Jack J	5 00	25 55		
Spence, W. N.	0 00	25 00		
Steed, C. P.	5 00	20 30		
Strickland, J. J.	5 00	1		
Strohecker, H. F	0 00	5 00		
Stubbs, J. M.		5 00		
Terrell, J. M	5 00	1 000		
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Thomas, G. D		15 00		
	15 00	10 00		
Thomas, L. W	15 00			
Thomas, W. S	10 00	l		

NAME.	DUES.		
	Paid.	Unpaid.	
Thornton, C. J.	8	\$ 5 00	
Tompkins, H. B	•	5 00	
Turner, C. A	5 00		
Turner. W. A	10 00	5 00	
Tye, J. L		20 00	
Wade, U. P		5 00	
Washington, H. V		15 00	
Weil, S		5 00	
West, T. B		10 00	
West, W. S	5 00		
Whitehead, Jas		15 00	
Whitfield, Bowling		5 00	
Whitfield Robert		25 00	
Whitfield, Robert		25 00	
Williams, J. S	5 00		
Wilson, L. A	10 00		
Wimberly, M	-0 00	10 00	
Wimberly, O. J		10 00	
Wimbish, W. A		10 00	
Wingfield, W. B		25 00	
Womack, E		15 00	
Woolley, Vasser	5 00	1000	
Worrill, J. H	0 00	20 00	
Worrill, W. C. (resigned)	5 00	20 00	
Wright A C	0 00	15 00	
Wright, A. CZahner, Robert	5 00	10 00	
·	\$ 930 00	i i	

## APPENDIX 3

## REPORT OF COMMITTEE ON JURISPRUDENCE

#### Mr. President:

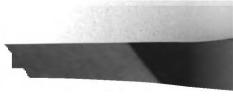
- 1. Attention is called to the pending amendment to the Constitution of this State, by which it is proposed to increase the number of Supreme Court Judges from three to five. There is a practical unanimity of sentiment in the legal profession, as well as with intelligent persons generally, in favor of this change, which renders unnecessary any elaboration of the subject, or to call for more at the hands of your committee than to recommend that this most important measure receive the benefit that will naturally arise before the public from its indorsement here; and your committee recommend that formal action be taken to that effect, and submit herewith a resolution covering the same for consideration of the Bar Association. The salary of the Chief Justice should be raised to \$4,000, and those of the Associate Justices to \$3,500.
- 2. It is greatly to be doubted whether the efficiency of judicial administration has been promoted by cutting up the State into such a very large number of circuits. The number of judges being thereby so greatly increased has, doubtless, added considerable influence in fixing small salaries. Your committee are of opinion that to reduce the number of circuits from twenty-three to fifteen, and increase the salaries of the judges from \$2,000 to \$3,000, would be a wise reform. The pay of twenty-three judges at \$2,000 is \$46,000; the pay of fifteen judges at \$3,000 would be \$45,000. The State would thereby be at no increased expense, and by fixing the salary at \$3,000, the State and the

public would be able to command legal talent equal to any, or the very best, in the profession.

3. The circuit judges should be removed as far as possible from local influences. The system is found to work well in those States, as for instance North Carolina, where the judges are not assigned permanently to any one circuit, but are required to rotate and hold the courts of the different circuits, and one after another upon a roster semi-annually prepared by the Governor.

It sometimes happens that by strong local influence candidates are elected to the bench in some one circuit; but if the Legislature and the public at large knew that, when electing any person to be judge of any one circuit, nominally, the person thus chosen was really to be a judge for the whole State, and would in turn hold the courts of every county in the State, this would necessarily exercise a very strong influence in inducing the appointing power to be careful in making selections. Under this system one judge would be chosen a resident of each circuit, but practically his duties would be, except possibly for convenience of access in motions and chambers matters, no more a judge of that circuit than any other in that State. The widening of power and increased dignity and authority of the office, incident to this system, would have a tendency to invite to the bench men of laudable principles of self-elevation, and the highest order of character and talent.

- 4. Judges ought either to be elected by the people or appointed by the Governor, with the advice and consent of the Senate. Appointment by the Governor is probably the best. But of all methods ever tried, that of election of judges by the Legislature is the most objectionable.
- 5. All provisions of law which restrain the judge presiding in trials in any court from expressing opinions about the evidence, or as to what has or has not been proven, ought to be repealed, and directly the contrary policy adopted, by making it the duty of the judge in all cases, civil and criminal, to sum up the evidence, but requiring him, of course, to leave the jury free, ulti-





mately and in the last resort, to determine matters of fact under the evidence for themselves. It is illogical and unwise to deprive the profession and the public of the knowledge and skill existing in the mind of a trained judge for the administration of justice, and leave inexperienced men in the jury box, to grope about and run the hazard of error and harm in their finding. If a man falls in the street, and there are bones broken or arteries cut, society does not leave it to a haphazard committee collected from the by-standers to staunch the blood or tie up the wounds; but these duties are left to the practiced hand, steady nerve and the trained eye and brain of the surgeon, who knows where and how to cut. It is just as bad to stay the voice and hand of the judge in a criminal trial, where public justice, human rights, and sometimes human life, are at stake.

- 6. The forms of law and very great labor necessary in moving for a new trial are too cumbersome and too expensive. Often a verdict is rendered which shocks the moral sense, and which the judge knows as soon as he hears it read, is wrong and ought to be set aside. Judges should have the power, as they do in the United States courts, to grant (at least one) new trial on motion made and decided ore tenus; but in case of refusal to grant a motion when made in that manner, such refusal should be no bar to a more formal motion made in the manner heretofore practiced and allowed by law, for the purpose of having the verdict more solemnly reviewed, in the same court; or upon writ of error.
- 7. The entire law on the subject of the prisoner's statement in criminal trials ought to be repealed, and in lieu thereof the prisoner ought to be allowed, not compelled, but allowed, at his own option to become a witness in his own favor; and upon his electing to go upon the stand as a witness, the prisoner ought to be subject to cross-examination like any other witness, or like any other party testifying in his own case in a civil cause.
- 8. Our law is too technical and has been carried too far on the subject of incriminating evidence. Any evidence obtained

in good faith from tracks, clothing, personal marks or peculiarities, papers, weapons, or other things found on his person, by compulsory examinations made in good faith by the arresting officer or person having a prisoner in custody, or obtained under order and direction of the court, should, upon principles of common sense, reason and justice, be allowed to go to the jury, such evidence to be weighed and considered for what the same may be worth under all the circumstances and facts of the case.

- 9. There ought to be no new trial in any case, civil or criminal, even though error were committed in the charge of the court, or in ruling on evidence in any technical or merely formal matter touching the arrest and arraignment, conduct of the jury or other occurrences of the trial, where the trial court, or the reviewing court, as the case may be, is thoroughly convinced that such error or errors did not actually influence the result; and where the court is satisfied that justice has been done, and that notwithstanding such errors the verdict is right under the facts.
- 10. In all trials before a jury in civil and criminal cases: counsel for either or both parties should have the right to submit requests in writing, and the judge rule on the same for use of counsel on both sides before the argument begins.
- 11. In the administration of the criminal law, the dead man, or the victim of the burglary, the robbery, the murder, the rape or other crime, ought at least to be put on an equality with the criminal and the guilty. The law and our forms of judicial procedure ought to be so changed as to allow the State the same number of challenges as the prisoner, and to move for a new trial, and to have a writ of error. We have gone too far in the direction of throwing legal protection around the prisoner. There is too much crime in the land, and it is greatly to be feared whether, if we of the legal profession search our own hearts, and consider as to whether we have done our whole duty, in at least endeavoring to bring about reforms looking to more speedy as well as exact and just results in criminal trials, we could say with Paul touching his service at Ephesus, "I am quit of the blood of all men."



We are aware that part of the suggestions above set out would require changes in the Constitution; that part of them are very radical, and to the minds of some will be regarded as startling; but the evils at which they are all aimed are very great, and are constantly growing greater. The startling statement has been made in the public press, and nowhere denied, that in many groups of, say a score of counties in the United States, there are more homicides than in all of Scotland, or in all of England, or even all of Prussia. Throughout the United States we have these fancy notions, by which, when a criminal is on trial, the judge is a cipher, and the jury are left in the dark, whilst the criminal is the only man in the courthouse who has any rights that are sacred. Our civilization has gone too far, and has overdone itself, in these matters. We deplore the lynchings that occur so frequently, and are growing more and more frequent throughout the land. The reason, or at least one great reason, why lynchings occur, is because there is a distrust, and constantly growing distrust in the promptness and efficiency of the law. Justice is one of the innate principles of the human heart, and public justice will assert itself. You may fill your newspapers with proclamations, and crowd your thoroughfares with the sheriff's officers and militia, but you will never stop lynchings, until the public is given to understand that the judge and jury have got the power to execute sure and immediate justice. In a thousand ways the evils here mentioned are very great, the remedy for them requires courage as well as prudence, moderation and wisdom; but like the evil the remedy should be radical and complete.

We have reported as above instead of mere platitude because we are in earnest. Respectfully submitted.

GEO. HILLYER, R. T. DORSEY, L. Z. ROSSER.

Atlanta, Ga., July 31, 1894.

## APPENDIX 4.

# SYMPOSIUM ON "OUR JUDICIAL SYSTEM—IS IT DEFECTIVE? IF SO, WHEREIN?"

#### PAPERS BY

JUDGES W. T. TURNBULL, J. L. SWEAT, AND B. B. BOWER.

#### A

#### BY JUDGE TURNBULL.

"The discretion of a just man is tyranny." When the old chancellors began the work of ameliorating the rigors of the common law by a judicious exercise of the discretion vested in their kingly offices, the old lawyers, schooled in Littleton, and later in Coke, declared that law was no longer an exact and stable structure, but that justice had become "all one as the chancellor's foot." "One chancellor," said they, "hath a long foot, and another chancellor hath a short foot," and their judgments do vary accordingly.

In due course of legal history, however, there grew up a chancery jurisdiction as fixed and exact in all its principles as that portion of justice administered in the courts of law.

In theory, therefore, lex scripta est became universal. But in practice there is still a realm as vast and undefined as the conscience of the king; it is the discretion vested in the judiciary. That it is wholesome and absolutely essential to the orderly administration of justice in many cases cannot admit of doubt. That it is a dangerous exercise of authority, in conflict with the spirit and theory of our institutions, and that it ought to be curtailed rather than encouraged, is just as certain. In the hands of honest, wise and upright judges, it sometimes



becomes the source of criticism and discontent, while in the hands of weak and unscrupulous men it is made the instrument of oppression, to punish enemies, or a city of refuge within which to shirk responsibility or shelter political fortunes.

The Georgia judiciary is vested by law with too large a discretion in the administration of justice, and in the plenitude of its unrestrained exercise still more is usurped.

The fault is a growing one, because so little responsibility attaches to its exercise. So great is the press of business in the Supreme Court that the illegal exercise and usurpation of this prerogative by lower courts must necessarily be often overlooked or condoned. However grievous may have been the injury when inflicted, there must be an end of litigation. For instance, the judges grant continuances when there is no legal ground therefor, and many a meritorious cause has been irretrievably crippled, or the judgment to be obtained rendered nugatory by an untimely and groundless postponement.

Again, the method and manner of the examination of witnesses is necessarily largely within the discretion of the trial judge. The strict enforcement of the rules of evidence is vital to a cause. It is the shading that gives it life or death. It is bad enough that a party must be allowed to testify in his own behalf, but it is infamous to have a skillful attorney take charge of a willing witness and lead him deftly to the establishment of a close and doubtful cause of action.

I sincerely believe that the indiscriminate violation of the rule prohibiting leading questions is the most fruitful source of injustice known to our system—not even excepting the bias and prejudice of juries. And yet there is not one judge out of ten who does not treat an objection to leading questions in such a way as to leave the impression upon the jury that counsel is engaged in a diabolical attempt to suppress the facts. The penalty is rarely enforced, and at most an objection simply amounts to a protest, because the form of the question is immediately changed and the intelligent witness responds accordingly.

Then, again, there is the discretion vested in the trial courts

and the courts of review upon the subject of the grant or refusal of new trials and injunctious, varying infinitely in different cases according to the physical mood and mental bias and temper of the presiding judge. Instances might be multiplied to illustrate the legal inconsistencies, conflicts and paradoxies that grow up out of the discordant exercise of judicial discretion.

I am aware that from the very nature of things many such instances are unavoidable, and in the main constitute wrongs for which there is and can be no adequate remedy, except in increased intelligence, learning and uprightness upon the bench. But if the laity are to retain their wholesome respect for law, every judge must be able to say, and say truthfully, to the losing party in any cause, civil or criminal: "It is the law—not I—that smites you."

Yet how often is this assurance belied by some such expression as this in the decision of the Supreme Court: "The trial judge might have exercised his discretion; he did not,—we will not."

Or this: "We can discover no reversible error in the judgment of the lower court, yet we believe it is wrong, and our sense of justice compels us to grant a new trial."

Or this: "Because we can discover no reversible error in the judgment of the lower court, we are constrained to let it stand, although we believe it is an outrage upon justice, and the presiding judge should have exercised his discretion and set it aside."

Or again: Creditors file two petitions under the McCay act for injunctions and receivers—one to the Superior Court of Atlanta, the other to the Superior Court of Augusta. The allegata and probata are identical in each case. The chancellor in Augusta, in the exercise of a sound discretion, refuses the application. The chancellor in Atlanta, in the exercise of an equally sound discretion, grants an injunction and appoints a receiver; or maybe in his absence the Judge of the Stone Mountain Circuit grants an injunction, but refuses a receiver.

Now, which judgment is correct? Upon appeal it is ad-



judged by the Supreme Court, that as there was no abuse of discretion, the ruling in each case was correct.

Now, suppose the defendant trader, whose career has been cut short by the Atlanta chancellor, decides that he may more safely conduct a business under the ægis of the Augusta court. In due course of time the same allegata and probata confront him again, but this time upon Augusta soil. He feels secure, but in an evil hour for him the Augusta chancellor is called away to look after his fences, or is otherwise disqualified, and, as fate will have it, the Atlanta chancellor is presiding in his place.

Quere? Would it be disrespectful in that defendant, or would he be wanting in that patriotic submission to judicial determination which our Chief Justice says should characterize even a citizen illegally condemned to be hanged, if he should feel that sometimes at least justice seems graduated to the length of a chancellor's foot?

An apparent failure of justice is not the only evil of these conundruns of the law, but they result in an amazing increase of litigation in the courts below and a deluge of appeals to the Supreme Court, for no lawyer is wise enough to say with confidence what the law of a case is until the last learned judge has exercised his discretion.

These are some of the evils. What is the remedy? It is easier to detect these shortcomings of our system than to furnish an adequate remedy. Legislation upon the subject cannot entirely remove them. A profounder sense of respect for established law and exact usage is demanded upon the part of both bench and bar. I respectfully submit that our abhorrence of the harsh, unbending principles of the law has driven us too far afield in the pursuit of that ignis fatuus of the Squire's Court—"Equity and Justice."

Judge Warner was right: "The most equitable justice and the justest equity will be found in blindly hewing to the line of established precedents—let the chips fall where they may."

The trouble with us has been that some enterprising legal sur-



geon has slipped the bandage and operated upon our blind goddess. She no longer holds the scales and wields the sword without knowledge of the litigants, but, moved by the pity of each case, as she sees it, she doffs her majesty and goes about doing good.

The inevitable result has followed: the judges have grown chicken-hearted in the administration of justice and have busied themselves binding up the wounds of the so-called martyrs to the rigidity of the law, while the thousands of victims to its looseness and uncertainty bleed unheeded.

It behooves us to return to the only safe, soothing, steadfast and satisfactory principle—"The law is written, and it will neither bend nor break in any behalf." Then can attorney say confidently to client, this is the law; then can the presiding judges say to the jury without fear of reversal, this is the law; then can the Supreme Court say to the bench and bar, this is the law, not only for this, but all similar cases; not only for the Atlanta, but for the Augusta circuit, and all other circuits in the State.

### R

#### BY JUDGE SWEAT.

Our State judicial system—and to that my observations will be restricted—embraces a Supreme Court composed of three judges, superior courts for each county, with a judge for each judicial circuit, city and county courts, with a judge for each, and other inferior courts, the Supreme and superior court judges being elected by the Legislature, and city and county court judges appointed by the Governor, by and with the advice and consent of the Senate. The jurisdiction of the different courts, as well as the power and duties of the judges, is fixed and defined by the law. Briefly stated this comprises our judicial system. That our Supreme Court as now constituted is inadequate is shown by the passage of an act proposing an amendment to the Constitution providing for an increase of the

number of judges from three to five, so as to reduce the labors and enable this court of last resort in our State to discharge its responsible and important duties in a more satisfactory manner. In my judgment this amendment should undoubtedly be adopted. With the growth of the State and consequent increase in litigation, additional circuits and superior court judges should be provided for, and the business and labors equalized. City and county courts should be established throughout the State to expedite and cheapen the cost of litigation, and it would be well perhaps to leave the selection of judges for these courts as now provided by law. In reference to the election of Supreme and superior court judges by the Legislature. frequent complaints have been made against slates, combinations and influences putting men in office not the choice of the people and circuits to be served. If in some instances this complaint be well founded, can it be remedied by changing the mode of selecting these officers to an election by the people or appointment by the Governor? I think not, for greater evils would in my opinion attend either of the other modes. election by the people there would be the constant temptation to pander to the prejudices and popular whims and caprices of the people, and the tendency would be to bring the judiciary down into the mire of political scrambles and bitter contentions among factions, and justly or not, there would be suspicions and charges of the administration of justice being prostituted to reward friends and punish enemies. To confer the appointing power upon the Governor would be to increase the patronage, responsibilities and duties of our Chief Executive, which I do not favor, and, besides, improper political influences and considerations in this connection might be urged with great force, for a combination of the entire judiciary of the State could largely influence and control the selection of a Governor, and the Governor himself would be charged with so exercising his power of appointment as to advance and further his own political preferment.

Upon the whole I think our present system the best. I be-

lieve the salaries of our judges should be increased. We want an able and stable judiciary. Good lawyers, as a rule, cannot afford to go upon the bench and remain long. Experience and training upon the bench are essential to a thoroughly efficient judiciary. I do not advocate a change of the term of office, but with ample salaries the judges could afford to remain upon the bench as long as they might be deemed worthy and deserving of election, and not be forced to the necessity, because of the meagerness of salary, of resigning and resuming the practice of their profession after enjoying the honor and distinction of the bench for a brief season.

C

#### BY JUDGE BOWER.

Our judiciary system is defective. In treating this subject as briefly as required in this article, I must necessarily deal more with facts and assertions than with reasons, at the risk of appearing somewhat dogmatic, trusting to an enlightened and learned bar to apply the reasons from the standpoint of their respective personal experience and observation.

- 1. The first defect would be remedied by increasing the Supreme Court to five judges.
- 2. The compensation for all judicial officers should be commensurate with the responsibility of their position and the character of their work, and sufficient to enable the State to secure the best talent and qualifications and to justify the officer in devoting his whole time and talent to the service of the State, even though he be encumbered with a family to support.

#### RELATION TO CIVIL PROCEEDING.

(a) All suits in all courts should be filed thirty-five days and served thirty days before court, and pleas filed ten days before court, and judgment in unlitigated and trial in litigated cases had at the first term, subject to the laws of continuance.

In brief, all parties to have time to prepare their cause or defence before the first term of the court.

- Motions for new trial should contain nothing but so much of the actual history of the trial of the case as movant depends upon to gain a new trial, omitting all contentions, insistence and argument of movant. As an illustration: if any portion of the charge of the court is assigned as error, merely state as an error that portion of the charge, but not incorporate in the motion the reasons why the movant insists that it is an error: don't encumber the record with reasons, but let them be discussed and amplified, if necessary, in the verbal argument before the court on the hearing of the motion. If error is assigned on any ruling of the court in admitting or rejecting evidence, let the ruling be stated without comment and without movant's reasons as his comments, reasons and arguments can be effectually made before the court on the hearing of the motion. This practice would reduce the expense of records, and would prevent the objectionable mixing together of the history of the trial and the contentions and insistence of movant.
- (c) Bills of exception based on motions for new trial should only contain the assignment of error in granting or not granting the motion for new trial, omitting all reasons, contentions, insistence, arguments and special assignments of error, as all this can be as effectually done in the argument of the case before the Supreme Court, there being for reference the motion for new trial, the brief of evidence, the charge of the court, and the balance of the record, or a sufficiency of each and all for the purposes of the presentation. The same economy of expense of record and lessening of confusion would apply to this as to motions for new trial.
- (d) Bills of exceptions, where there has been no motion for new trial, should only clearly and succinctly state the error committed by the court complained of, and not characterize it; and omit all comment, contention, insistence, argument and special assignment of error, with reasons, etc., as all this can be done in the argument before the Supreme Court, who are supposed to

have the whole history of the case and the record thereof, or so much of it before them as will enable them to determine the questions.

- (e) Charters should be granted at chambers, at the time and place advertised to be granted; in practice there is rarely one contested. This proceeding does not contemplate that the citizens of the county in which the application is made will be any more defendants than the citizens of any other county in the State. And charters which are usually granted as a matter of course need no special judicial solemnity.
- (f) The law that requires judges to previously write out their charges on request should be repealed, for the following reasons: 1. A stenographic report of the charge would practically secure a correct version of the whole charge, and might as safely be relied on for this purpose as it is now relied on to secure a correct brief of the vital testimony in the case, which testimony is, perhaps, as important to the rights of litigants as the charge of the court. 2. This requirement might be considered in the nature of an insinuation against the judiciary. 3. It is an inconvenient practice. 4. A previously written charge can never give that full measure of justice to citizen or State as a verbal charge delivered by a judge that is filled with the inward spirit of the case from a comprehensive view of the whole evidence and law and argument of counsel. rience is that the charge of the court is more perfected by a close attention to the argument of the counsel on both sides than by anything else. Therefore, the practice of writing out the charge during the argument, thereby being prevented from giving close attention to the argument, detracts much from the charge.
- (g) The bail remedy in trover cases ought to be abolished. There seems to be no consistency in imprisoning a citizen for not delivering up some insignificant article of personal property borrowed, in a State whose laws prohibit imprisonment for the non-payment of the largest debt for money borrowed.

### CRIMINAL MATTERS.

- 1. The mode of trial of criminal defendants of the same grade should be uniform in all courts. Now in a county court he is tried before six jurors, and in the superior court before twelve jurors for the same offence.
- 2. Certain statutes, prescribing punishment for, to wit: Sec. Code 4323, Murder; 4350, Rape; 4399, 4401, 4403, Cattle and Hog Stealing and Unlawfully Marking and Branding, should be so amended that the judge, in pleas of guilty, would have the same discretion in sentencing to the lowest penalty that juries now have on the trial. Pleas of guilty cannot now be entered in these cases unless the defendant is willing to undergo the maximum penalty.
- 3. Confinement in the common jail should be abolished as a punishment for crime. The jail should only be used for the detention of prisoners either before conviction, who are by our law presumed to be innocent citizens, or after conviction are known to be guilty. It is inconsistent to give a citizen presumed by law to be innocent the identical treatment you have prescribed as a punishment for the guilty. Besides, it is expensive to the counties to punish guilty men by boarding them in jail. The statutes that need amendment on this subject are: Sec. Code 4360, False Imprisonment. Sec. 4370, Shooting at Another. Sec. 4587, Fraudulently Obtaining Credit. 4600, The Wrongful Sale of Mortgaged Property. 4605, Destroying Books and Papers. 4481, Attempts to Rescue, and perhaps others.

The balance of this paper may not be strictly in line with the subject, but its close relation might justify it being appended.

The punishment for the following crimes should be reduced, to wit: Sec. 4367, 4368, Kidnapping, now four to seven years in the penitentiary, should be one to seven. Sec. 4424, Larceny after Trust, now one to five, should be within the discretion of the judge to inflict misdemeanor punishment under sec. 4310. Secs. 4455, 4454 and 4442, Forgery, should be reduced in the minimum to one year, and also in discretion of the court to punish



under Sec. 4310. Secs. 4461, 4463 and 4465, Perjury, False Swearing, and Subornation of Perjury, should be reduced in the minimum to one year. Secs. 4479 and 4483, which are very defective, ought to prescribe punishment definitely, from one to twenty years. Sec. 4481 should be amended so as to allow court in its discretion to punish under sec. 4310. Sec. 4531, Bigamy, now two to four years, reduced in the minimum to one year. Sec. 4608, evidently a mistake, ought to be corrected. Sec. 4617, Punishing Obstructions to Public Highways, ought to include private ways, as they are as numerous and important-Sec. 4373, Abandonment of Children, should define this offence, the allowing his children to suffer for necessaries of life, whether he be present or absent.

These suggestions are made partly in view of our peculiar political conditions emanating from our different race citizenship.



# APPENDIX 5.

# REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

To the Georgia Bar Association:

Your Committee on Judicial Administration and Remedial Procedure beg leave to submit the following report:

At the last session of the Legislature an act was passed providing for the appointment of three citizens "learned in the law" to codify the laws of the State. His Excellency the Governor and the Justices of the Supreme Court, upon whom was placed the responsibility of selecting these codifiers, exercised a wise discrimination by naming Hon. John L. Hopkins, Hon. Clifford Anderson, and Hon. Joseph R. Lamar, all three of whom are members of this Association. The authority given to these codifiers is contained in the following words: codify and arrange in systematic and condensed form the laws in force in Georgia from whatever source derived, following the general plan and system of the Code of 1863 and subsequent revised editions thereof." From this it would appear that the codifiers are not empowered to make new law, though it would be competent for the Legislature to enact their report into law as was done in 1860. But they are required to do more than simply revise existing statute law. "To codify and arrange in systematic and condensed form the laws in force in Georgia from whatever source derived" will necessitate the omission of much that is in the Code, the addition of much that is not in the Code, and the harmonizing of all statutes with the construction placed upon them by decisions of the Supreme Court.

This work of codification is of great importance to all classes and interests in the State, but none are more vitally concerned therein than the members of our own profession.



The Code of 1863 was in many respects a marvelous piece of work, but necessarily contained many deficiencies. Numerous amendments by statutory enactment have been made since the adoption of the original Code, and in most instances these amendments have worked good and not bad results. There has been a continuous and gradual accretion to the body of our law, curing sometimes minor defects, and at other times making radical changes. It grew like the common law, by a sort of process of evolution, conforming itself to the practical needs of our people.

It is not to be supposed that our laws as they now exist are perfect in their application even to our present conditions. Those remaining imperfections can be detected by none so well as by those codifiers whose work and duty it is to subject every portion of the law to careful and microscopic examination. They will surely encounter many questions of grave doubt, and will discover many instances where supplementary or corrective legislation is needed, and upon some points they will probably find difficulty in reaching a true construction of certain decisions of the Supreme Court.

In all these cases it is very important that certainty shall be definitely secured, and the chief purpose of this report is to suggest that the Bar Association of the State request the codifiers to make memoranda of defects of the character above pointed out and report them to the Legislature as a body, or present them in the shape of bills through some competent member of the Legislature in order that final action may be had upon them promptly at the next session, so as to have the changes properly incorporated in the new Code. \* Your committee have no knowledge as to when the codifiers will have their work ready for submission to the Legislature. But we suggest that it would be well for the full and final report to be withheld until the second session of the Legislature of 1894

<sup>\*</sup> Here Mr. Fleming said orally: "I will state just there, as an illustration, that one of the codifiers spoke to me upon this subject, and said that one examining the Code of Georgia he found seventeen different methods of condemning land; there was one for railroads, there was another for canals, and for various purposes of one character and another. It does seem that those seventeen methods could be reduced to one, or at least to a dozen."



and 1895 in order that the Judiciary Committees of the House and the Senate may have opportunity at the first session to consider all recommendations received from the codifiers. By this course of procedure our new Code would be made more nearly perfect, and we feel sure that the gentlemen engaged in this difficult task will accept our suggestions in the same good spirit in which they are offered. Respectfully submitted,

WM. H. FLEMING, Chairman, BRYAN CUMMING, WM. T. DAVIDSON, W. K. MILLER, C. HENRY COHEN.

## APPENDIX 6.

## THE PRACTICAL USES OF THE ROMAN LAW.

## A PAPER READ BY HON. WILLIAM C. GLENN,

BEFORE THE ELEVENTH ANNUAL MEETING OF THE GEORGIA BAB ASSOCIATION, HELD AT ATLANTA, GA., JULY 31, 1894.

"The vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument. Under his reign and by his care, the civil jurisprudence was digested into the immortal work of the Code, the Pandects and the Institutes. The public reason of the Romans has been silently or studiously transferred into the domestic institutions of Europe, and the laws of Justinian still command the respect or obedience of independent nations."

These are the opening words of Gibbon's celebrated chapter on the Roman law. That chapter has largely anticipated the modern historical method of dealing with legal subjects and legal institutions. Though written by one not a lawyer; though written before the discovery of the Institutes of Gaius; though written before the blaze of light which recent criticism and research have turned upon Roman history, institutions and law, this chapter is still valuable to the student. When written, the struggle between this country and England was progressing and a nation was coming into being which, less hampered by the traditions of the past and less bound by a rigid system of jurisprudence, intertwined with its history and social life, was, in the future, to import a vast amount from this immortal source.

In two ways the Roman law has passed into the jurisprudence of the different States and of the United States. First, through the medium and as a part of the English law itself, which our forefathers had received as the basis of our institutions, law and procedure. Second, by direct importation after the political

connection between the two countries had ceased. The latter is still going on, and will continue to do so as long as men are governed by high considerations of justice, and broad and reasoned rules of right.

Accepting as correct the dictum of Mr. Herbert Spencer, that "Law, whether written or unwritten, formulates the rule of the dead over the living," we are the heirs of two great sys-These two share between them the civilized world One began on the banks of the Tiber, among the three tribes who dwelt in the huts whose sites were afterwards marked by the Forum, the Amphitheatre, and the palaces of the Cæsars. continued to grow and expand as the Roman people brought the adjacent tribes, then Italy, then surrounding countries, and, finally, the known world, under the dominion of the Roman We can trace its career with reasonable certainty for over a thousand years between its codification in the twelve tables and its final codification by Justinian. the Roman empire ceased to exist, this system became, and still is, the basis of the laws of modern Europe: German, Spanish, Italian, Dutch, and wherever they have conquered and occupied. Filtered through the French system, it is penetrating Russia, Turkey, and Japan. The other, beginning in a little island, largely out of the current of European legal development, largely uninfluenced by extraneous sources, has continued to widen with the advance of the English race, and has been carried around the globe, until to-day its principles, as modified by the Roman, exert an influence over the lives. fortunes and characters of a vaster dominion than that ever under the sway of the Roman Empire.

The attitude of the English people, under the common law, has been, until recently, antagonistic to a proper estimate of the competing system. For obvious reasons the American bar has been more receptive of the influence of the civil law, and has been much juster in the estimate of its great importance, and more ready to adopt its reasonings and conclusions. Among the older writers it is sufficient to refer to the names of Kent and

Story; and among the later, that of John Norton Pomerov and Oliver Wendell Holmes, Jr. While there have been, at times, exceptions among English writers and judges, the majority have sought to minimize the influence of the foreign system upon their own. Within the last forty or fifty years this attitude of hostility, this failure to properly appreciate and understand the debt owing to the civil law, has been largely corrected. changed attitude is due to the recent more scientific study of the law under the influence of the historic and comparative methods. The remote causes are due to the destructive attacks of Jeremy Bentham who first endeavored to teach the English people that their common law was not, after all, the very "highest perfection of human reason," and that there were methods in its procedure and doctrines in its substance which were not the Ultima Thule of human wisdom. He was the shaker of prepossessions and the disturber of prescriptive ideas. He and his great desciple, John Austin, a name unfortunately too little known among the members of the bar in this country, were the founders of the analytical school of jurisprudence, and by their criticisms of legal terms and conceptions, they have added a number of ideas and methods which are powerful adjuncts to a true science of the law.

Not so much to analytical, but to historical and comparative, schools must we look for the changed position of our English brethren to the civil law; and back of them we must look to Germany for the true beginners of historical and comparative jurisprudence, high among whom stands the name of Savigny, the real founder of the historical school.

With some recent writers there is an effort to depreciate the commentaries of Blackstone, but they are largely historical and to some extent comparative, and within the limits marked out for himself, it is doubtful if this great work could have been excelled, even by some of the better informed writers of to-day. He treats with uniform respect the private law of the Romans, while minimizing its influence over the English.

The first English writer who seems to me to have written on legal institutions with the breadth, the scope and the proper his-

toric insight, is George Spence, whose "Equitable Jurisdiction" is one of the most striking performances in historical and comparative jurisprudence which the English profession has pro-The man who has most influenced public opinion and who has reached the widest circle of readers is Sir Henry Maine: and his labors have been largely supplemented by accomplished lawyers and profound scholars like Sheldon Amos and Frederick There age some books the reading of which consti-Pollock. tutes an epoch in one's intellectual life; One has known many things in a disconnected way. He has known the particular. not general; he has lacked some broad and intelligible theory, some wide-reaching and profound generalization to synthesize the scattered elements floating in his mind. Such a book is that. of Sir Henry Maine on "Ancient Law," and his others. are others, such as Professor Hunter, Mr. Roby, Sir William Markly, who have contributed to this revived interest and have endeavored, upon the broad basis of a comparison of existing and extinct institutions and legal doctrines, to elevate jurisprudence into a science.

The first reason for a study of the Roman law is found in the light thrown by its history upon the beginning, growth, development, methods of solution and formal instruments of the law. This is the age of origins. Everything—religious, social, political, legal and moral—is being reinvestigated in the light of its history, and being called upon to justify itself upon a basis of right and utility. As one branch of the growth of human ideas. the investigation of the history of the law carries us back beyond the earliest times of which we have any written record; and in its forms and symbols and methods of procedure a large amount of the world's past is petrified. It is impossible to understand why legal doctrines and procedure are so, except through the medium of the past. A nation's laws are its autobiography. In it are embodied their conceptions of right, their views of the duty of man to man and to the State. It is the self-revelation of what the past really thought, felt and did; and it is handed

down to us, not by the historian who writes from the outside, but from the inside by the people themselves.

The Roman law has a long and continuous history. We can trace it back to the time when, legally speaking, the individual did not exist, when he was a mere member of a family corpora-We can trace in it the disentanglement of the individual right from the family corporate right. We can almost discover the time when man first became capable of contracting, and escaped the iron-bound reign of status and condition. Reversing the average idea, we discover that simplicity is the work of the rivesent, and not of the past; that form was more than substance; and that the law of the progress of law has been from the more to the less formal through its whole life. Reversing ordinary ideas, also, we discover that there were courts and judges before there was law or lawyers; we find a time when the procedure was of more importance than the right, and when actions were of more consequence than the obligations sought to be enforced. We learn that laws and institutions are not made, but grow; we learn to look for the establishment of a great thing like trial by jury, not from the fiat of an Alfred, but as the result of a slowgrowth through almost insensible accretions and gradual changes arising from many causes in the life, surroundings and necessities of society. As the cairn has grown into the cathedral, as the rude sounds recurring at regular intervals have developed into the symphonies of Beethoven and the operas of Wagner, as the canoe burned and hacked from the fallen tree is the parent of the battleship, and as the wandering horde has become the civilized nation of to-day, so has the law been built up, and so has it attained its position, and so have its institutions been formed. The all-pervading law of evolution has been conformed to by the law The best replies to communism, socialism and anarchy are imbedded in the history of the law. Its mission has been to establish the freedom of the individual against all restraint, except that which is rested on the public good, and to narrow the functions of the State, except as it through and by the play of the free effort of its citizens assists in bringing this about; and

that government is not an evil, either necessary or otherwise, but springs from the very constitution of man. This history shows that property is not robbery, and brings home the truth that the State can accomplish more by breaking down the barriers to individual effort than it can by legislating its citizens into mere In tracing the hisappendages of an all-embracing machine. tory of this system, we discover how better views, correcter notions, more enlightened, flexible systems of procedure, a fuller regard for the substance and a more accurate adjustment to an ideal standard, take place; and we discover, when placing it side by side with the history of the common law, the wonderful uniformity in the methods and results of legal development. I cannot refrain from noting the parallelism in the history of pro-First, a rigid, fixed, technical system of forms of action in which the slightest error was fatal: the Roman "actio." the English action at law. Second, the formulary system, with its greater flexibility and adaptiveness to the special facts of the particular case: the English action on the case and bill in equity. Last. the abolition of all distinction in forms of action and the mode of trial; one uniform system for the enforcement of all rights: the modern fusion of law and equity procedure. Rome, so in England, so in America.

The historical investigation necessarily leads to the next reason for the study of the Roman law. Modern research has succeeded, not so much on account of greater mental power wielded by us than our forefathers possessed, as by a difference of method. That method has consisted in the handling of the subject to be investigated in the comparative way. Its application has been along all lines of research, and its results have enriched every domain of knowledge. As religion, language, literature, mythology and every branch of investigation has yielded important results under the spirit and guidance of this method, why not apply it to law and politics? The already established results are valuable, and are even more full of the promises they hold out for the future. To contrast the fortunes of these two systems, to mark their resemblances and differences, to see how humanity in

11 GEORGIA DAR ABSOCIATION.

its struggle towards the right has dealt with perpetually recurring problems under diverse circumstances, and to discover the solutions they have reached, is an important object of study. · learn as much when they are in contrast as when they are similar, and the oppositions in their results are as valuable as their If we are ever to know that law to which law itself must conform: if we are ever to discover the immutable principles which should lie back of every legal system and become its foundation, it can only be done by a comparison reposing upon an exact acquaintance with the history of all legal doctrines. Another reason is that, in the nature of things, the profession of the law in this day must adopt the method or habit of thinking back of cases to the principles on which they rest; and in an elaborate system turning upon essential principles, dealt with by a number of the acutest intellects, there is left with us a vast fund of information. We are confronted with a multiplication of cases on almost every possible point. In a country like ours, with forty-four States and soon to be forty-seven, each with a system of jurisprudence, conflict of decision is a necessary Paradoxical as it may seem, on the same state of facts two Supreme Courts may decide right when arriving at exactly opposite conclusions. Considerations of local policy, past history and other circumstances may make two irreconcilable conclusions relatively right. As still further contributory to this vast body of case law, we have the decisions of the Circuit Courts of the United States, nine Circuit Courts of Appeal and the Supreme Court. What are we to do with the lawless science of our law, that codelesss myriad of precedent, that wilderness of single instances?

No human industry can compass, and no memory retain even a small part of this avalanche of authorities. The necessary result is to drive the profession back of the cases more and more to the investigation of the principles on which all cases must finally rest.

Says Sir Henry Maine: "The Roman law is not a system of cases like our own. It is a system of which the nature, for practical pur-

poses, though inadequately, may be described by saying that it consists of principles and express written rules. In England the labor of the lawyer is to extract from the precedents a formula which, while covering them, will also cover the state of facts to be adjudicated upon, and the task of rival advocates is, from the same precedents, or others, to elucidate different formulas of equal apparent applicability. Now, in Roman law, no such use is made of precedents. The corpus juris, as may be seen at a glance, contains a great number of what English lawyers would term cases, but they are in no respect the sources of rules. They are instances of application. They are, as it were, problems solved by authority, to throw light on the rule and to point out how it should be manipulated and applied."

To express the same idea differently, the one is a system of induction, and the other a method of deduction, and we must remember that deduction is the final phase assumed by anybody of knowledge when it has passed into its scientific stage.

It has always seemed to me that by a remote or strained analogy the body of law could be compared to some great idea moving forward slowly and resistlessly towards the right. idea must be propagated, extended and defended by men who arise, do their work and vanish. The cases are like these men. They are called forth, do their work, contribute their share and disappear, while the great idea of which they are exemplars and exponents remains, and they have always appeared to me most valuable as exemplifications of the principles and reasons on which they rest. I do not underestimate the value of cases. but to learn them seems to me most essentially valuable for the mental training which we derive from the contact. ence consists in looking at the case as a rule and an ultimate, or in regarding the case as an illustration and concrete application of the principle of which it is an outgrowth. The ideal professional training results from a combination of these two. For the one the common law affords the best field, for the other the civil. I am not disposed to underestimate the grandeur and liberty-loving spirit of the common law; I wish to supplement



it with the methods, results and intellectual habits derived from a study of the competing system. It has often occurred to me that being a lawyer, in its highest sense, is a habit of thought, a mental method, rather than the possession of a body of doctrines; and for the acquisition of this method the study of a system of principles is a better training than the reading and learning of any number of points.

I have said in the opening of this paper that the Roman civil law influences ours in two ways-one, by being adopted as a part of the common law, and the other, an importation of our own. Some illustrations will be given which are merely illustrations to bring out the importance of its study for this reason. As this paper does not deal exhaustively with the question of the influence of the Roman on the common law, I only use some of the more striking illustrations and undoubted facts. I pass by many things, such as the influence of the clergy, the canon law itself being derived from the Roman, the teaching of the civil law in England, and numbers of other points which could be used did the occasion require it. My object is to suggest only the importance of the Roman law as a practical object of professional study for to-day, and not as a mere antiquarian pursuit. While it is true that the opposition of law and equity in a remedial and jurisdictional sense has become less important in a majority of the States, of which ours is one, as well as in England, still a knowledge of the rise and development of the English equity system, as contrasted with the English law system, is of great importance. As the distinction yet exists and will doubtless continue to exist in the jurisprudence of the United States, it is for that reason of great impor-While, historically, this opposition, which is a peculiarity of the English and systems derived from it, may be traced to remedial defects in the common law courts, the conception has so thoroughly pervaded the whole common law system that the abolition of its causes will not abolish its effects. equitable procedure have been fused, law and equity have not. No thorough and accurate acquaintance with the equity juris-

prudence or procedure of England, or of this country, is possible without an acquaintance with the Roman. The very name chancellor comes to us from it. The forms of procedure, the rights enforced, the remedies afforded, the causes for the existence of equity, have striking analogies to each other. Take any of the older books on equity jurisprudence, Spence or Story, see how much is cited from it, observe how many reasons are drawn from it, and any one will be impressed with the great extent to which it has colored and modified our wide-reaching system of equity procedure and equity jurisprudence. of equity of this day have applied their system to an extent undreamed of in the older days, but the underlying ideas are the The admiralty proceedings of the Federal courts are Roman modified by the English. With wider jurisdiction and a greater measure of responsibility and much larger power than that of the admiralty courts of England, the Federal courts are enforcing a system substantially derived from the Roman through the English law. The very idea of a will or legacy is Roman. For feudal reasons the common law long rejected the right of a man to make a will of lands, and it is less than four hundred years since the right did not exist in the common law except by special custom or by means of uses. Legacies, construction of wills, almost the whole body of the English testamentary law is Roman in its origin and largely so in its method tof expression. The cognate thing, donatio mortis causa, name and requisites, has been bodily imported into the English system. Commercial law, using the term in its widest sense, has been almost made by it. Becoming necessary, as it did, after England had ceased to occupy an almost purely insular position, under the influence of the great Lord Mansfield, almost the entire law of promissory notes, exchange, insurance, etc., was reduced to system.

"This system," says Spence, "which is admitted to exhibit a comprehensive and enlightened jurisprudence, is based upon a different reason from those which govern real property law, and is derived from a variety of sources and authorities: from inter-

national law, the different maritime codes of Europe, and, above all and beyond all, from the imperial code of Rome."

Our law of bailments, one branch of which carriers is,—a subdivision of our vast body of railroad law, is scarcely more than an amplification of the great judgment of Lord Holt in Coggs vs. Bernard. itself almost a transcript from the Roman law through the medium of Bracton. I can only refer to trust. easement and servitude, and mortgage by name. Of the second class, where its principles in opposition to the common law have been consciously adopted by nearly if not quite all the American States, especially by our own State, many illustrations might be The relation of the owner to real property in this country is essentially non-feudal. We still use the expression in this country, "tenant in fee-simple," and feudal forms and feudal history are to some extent still materially necessary to an accurate understanding of conveyances, but we are separated by an immense chasm from our English ancestors in the relations which they bore and we now bear to our real property. more than tenants, we are owners, and our attitude is the same as was that of a Roman citizen towards his. The Roman law recognized no distinction as to ownership between real and personal property. The distinction is peculiar to the English and derived systems.

Our Code, section 2221, provides: "The tenure by which all property is held in this State is under the State as original owner. It is without service of any kind, and limited only by the right of eminent domain remaining in the State." Section 2445 abolished all distinctions as to estates in the two classes of property, and these provisions are expressive of our American view. The ownership of the Roman law is much more comprehensible to the average American than is the tenancy of the common. To Gaius these sections would have been plain, to Sir Edward Coke they would have seemed the summit of human folly.

One of the most important doctrines of our law is the effect of adverse possession on the title to real property. A large

amount of property in this State, and in all the States, especially the new ones, reposes upon titles ripened through adverse possession. This title is more than a mere bar to a recovery by the holder of the paper title. It is an actual one which may be the basis of a suit against any one, and is to all intents and purposes as perfect, except as to persons under disability, as an original grant from the State itself. It is known to us, and was known to the Romans, as a prescriptive title. The circumstances required to make a starting point for it, and the tacking of possessions, and the other incidents to its acquisition, as stated in our Code, and in laws of most of the American States, are reproductions from the legislation of Justinian.

One thing which would be selected as new is the status of married women with reference to separate property. It passed through the same phases in the one system as in the other. With reference to the person of the wife, it was even more stringent in the old than in the new; but the Roman law anticipated our law with reference to this subject. In its later stages there was no restriction on her power with reference to her property, except upon those intended for her own benefit. She, as in our own State, could not incur the obligation of suretyship. So far as England has modified her law on this subject, she has not reached the freedom which women had under the other system.

Another departure in our State is with reference to warranty in sales of personal property. In the one system there was no warranty implied by law, except in a very few cases. In the other there was such, and our Code has, on this subject, adopted the more refined morality and the higher ethical standpoint of the Roman system.

As to intestate succession to personalty, the Roman lies at the basis of our entire American system, both of real and personal property. The statute of Charles II., providing for the distribution of an intestate's goods and chattels, is based upon the 118th Novel of Justinian, and places the distribution of them upon almost the same footing which it stood more than one thousand years before. This statute, with variations, has been adopted in every American State, but in adopting it they have carried it beyond the scope it occupied in the English law, and have applied it to lands, and to-day the law on this subject in this country is Roman, not English. The heir at law and the distributee are the same persons.

Says Judge Cave, in Davis against Rowe, 6 Rands (Va.), 364: "Our statute looked at the common law canons of descent to avoid, not to imitate, to pull down, not to build up. All of its principles are violated, its landmarks removed, its fences broken down, its traces obliterated."

Judge Harrison, in Garland against Harrison, says: "Its basis was the statute of distribution, and the civil law. It was founded on the great principles of justice. Its object was to make such a will for the intestate as he would himself probably make; and its obvious policy was to follow the lead of the natural affections, and to consider as most worthy the claims of those who stood nearest to the affections of the last occupant."

This language is applicable to the statute of distributions of every American State.

Our American requirement of registration, which has done so much to prevent frauds, and to render transfers safe and convenient, has no parallel in the law of our ancestors. It comes from the Roman, and to-day the laws of France and Germany are nearer in accord with ours than are those of England. England's registration system of to-day is not so comprehensive and particular as ours. These are given as illustrations of the importation of law antagonistic to the common, and the list could be indefinitely extended, but they embrace within their circuit an immense portion of the law of our country.

One may be a successful practitioner, and may, in the language of the day, "make money" practicing law, but no man will be a real lawyer in the highest and best sense who does not study it in its history and in its growth, who does not compare his own with other systems, who does not train his mind to an investigation of principles, and who does not get beyond the mere circle of the cases as such. For each and all of these reasons the study of the Roman law is valuable to the practicing lawyer, and in the best and truest sense of the term this is the practical method of studying our profession.

We can only advert to the position which the Roman system occupies in the expected and forthcoming international system. So interwoven have become the interests of the different nations of the world, that the policy of an enlightened self-interest dictates justice on the part of each to the other. To-day we are endeavoring by arbitration, and in other ways, to rid the world of war. The groundwork, outlining a plan for an international code, has been laid. The public judgment of the world has been appealed to to sustain it. While we can hardly expect the entire abolition of war in the immediate future, we are justified in expecting a mitigation of its horrors and a narrowing of its causes. The public opinion of the world can be focused so powerfully as to influence the conduct of independent States. This proposed code rests largely upon the reasonings of the civil law. Its principles being capable of application to the highest concerns are readily assimilable into a body of rules of international conduct whose basis of compulsion is the intrinsic justice of its deliverances. There is to-day and has been for years in England, a growing sentiment in favor of codification, a growing belief in its possibility, and a growing desire to realize this possibility. Important segments of the law have already been codified in substance. A code of procedure for the High Court of Justice, consisting of rules framed by the judges, was enacted into a statute in 1882. Parts of the substantive law, such as bills and notes, have been dealt with in the same way; for the Indian Empire, the Indian Contract Act, and the Indian Evidence Act have been passed. last twenty years the subject has been agitated upon grounds largely derived from the Roman and civil law; and the spirit of that law and its methods of classification have largely dominated the views of English lawyers and reformers. We in this



country have a number of codes, the earliest that of Louisiana, a product of the civil law, which holds a high rank in the history of this subject. Our own State was one of the earliest with a true code. How profoundly the Roman law has influenced our civil code is easily discoverable. In some of the recent codes the same will be found, notably in that of California, whose code is distinguished by a scientific arrangement, closeness of definition and clearness of expression which could only have been reached by a study of the great models of the past.

The contest between the divergences of these two systems will continue, resulting in the "survival of the fittest" in the law of the future, and it may be safely predicted that those maxims which approach nearest to what the law should be,that is, a system of applied ethics, will be the permanent elements. Of these elements it is not going too far to say that the Roman has contributed its full share, and wedded, as it is with us, to free institutions and penetrating our whole system, it will reach a higher development through them than it could have reached in the hands of the Romans or their successors. The barbarians wrecked the empire; the fallen empire has given its laws to them and their descendants. They who had and have the spirit of freedom have become yet greater by following the spirit and carrying out and enforcing the morality of the laws of the dead and buried empire. The empire of forces and arms is of the past, present and future; and, perpetually renewing itself in the noblest aspirations of humanity, it will flourish in immortal youth.

## APPENDIX 7.

# REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

This subject contemplates both the preparation of a lawyer and the proof of such preparation. The preparation being properly made, the admission proceedings are of no service, except as they furnish proof of preparation, but serve a twofold purpose in furnishing proof that the applicant is worthy for the benefit of the bar, and that he is skilled for the benefit of himself and the public.

The defect in the legal education of the average young man is not that he has not read much law, but that he has not read law Accuracy and a thorough knowledge of the principles underlying the legal structure are much more important than a superficial knowledge of many books. Young men frequently attempt to read law by themselves. This is a wrong both to the student and profession. It is as important that a law student should have a teacher while learning the first principles of the science, as it is that a student of Greek, Hebrew, or any other language, should have a teacher in learning the fundamental rules of such language. If the course prescribed by our statute was thoroughly taught and accurately comprehended and underderstood, and the student then familiarized with legal forms and procedure, his legal education would be founded upon such a substantial foundation as would enable him to erect a legal structure commensurate with his brain.

The examination preparatory to admission should be conducted with the same precision and accuracy as the preparation. Self-preservation demands that the profession refuse admission to all who are not up to the high standard of the true lawyer, for in the public mind an incompetent, discourteous or corrupt



lawyer is like a little leaven; it leavens the whole lump. It is perhaps true, public opinion to the contrary notwithstanding, that we have a less per cent. of bad material than is to be found in any other profession or calling. It is equally true that some of our brethren are below the standard.

The trouble is not so much in the law on the subject of admission to the bar, but in a failure to enforce the law. The examinations are usually hastily made, with but little responsibility felt by any one, and the applicant admitted upon the statement of the examiner that he is satisfied. This usually occurs after jury hours, and when everybody is anxious to leave. To remedy all these evils the following suggestions are made:

- 1. Let the application for admission to the bar contain the certificate of some reputable lawyer who practices in the court where application is made, that the applicant has read, studied and mastered, under his instruction, all the law now required by the Code, specifying what book has been used on each subject; and that he has instructed him in the ethics of the profession. Let him furnish the proof now required as to his moral character, but require each lawyer certifying to his character to state his opportunity for knowing the same, and the judge determine whether or not moral character has been proved.
- 2. Let the court appoint a committee of competent lawyers to make the examination upon the various subjects, including ethics. Then let each committeeman prepare written questions on the subjects assigned him, and see that they are answered without assistance, likewise in writing; this examination to take place in private at an office, or elsewhere convenient, each committeeman then to make a written report on such examination and file the questions, answers and report with the clerk, to be recorded as other court proceedings. In addition to this, let the applicant be examined in open court as to court procedure in civil and criminal cases, so as to compel the student to familiarize himself with the simpler trials before he takes his first fee. Upon this written and oral examination let the judge pass his order refusing or admitting the applicant.

### APPENDIX 8.

# SYMPOSIUM ON WHAT QUALIFICATIONS SHOULD BE REQUIRED FOR ADMISSION TO THE BAR.

### PAPERS BY

HON. A. J. CROVATT, HON. L. Z. ROSSER, HON. R. R. ARNOLD.

#### A

### PAPER BY JUDGE CROVATT.

In the opinion of the writer the answer to the above interrogatory is broadened, if we admit the fact that upon the members of the bar depend more largely than upon any other class the conserving of the good order of society, the respect for law, and consequently the efficiency of that law, the peace of society, and even to a very large extent good morals. An historical examination will disclose the fact that lawyers have been from the earliest days of their recorded existence among, if not the chief, leaders of men, organizers of society and moulders of public sentiment, and that to them the people of almost all ages and all countries have largely looked for counsel, advice and direction, whether in matters of legislation, social regulation, pecuniary difficulties or domestic troubles. In the golden age they were eminent, and in the "dark ages" they, equally with the clergy, preserved and perpetuated the literature of the world, and as it passed away emerged from its darkness and took their places among the scholars and the advocates of reform, of improvement, and advancing civilization, and as a class the record thus assigned to them has been unbroken to this day, and the rule is yet to find them now, as of yore, in the high places, and guiding the light which civilization throws upon the world at large as the nineteenth century approaches its culmination.

In view of this scope of inquiry, the writer is of the opinion that much more than mere scholastic attainments ought to be included among the qualifications which ought to be necessary to admission to the bar. These qualifications may then be said to consist of two distinct classes, the first and most essential being the moral qualities, which should be inseparable from the mind, character and qualifications of any person contemplating the practice of the law; the second being the information required by an applicant for admission to the bar.

I have said that the first is perhaps the most essential, and I believe that is true, for a fairly successful practitioner will at many times during the course of an ordinary career, have presented to him many opportunities in which his action would be taken, and based upon the strength and the breadth of his moral standard, and he would follow the one course or another, according as that standard, expressing his views of right and wrong, was pure and broad, or narrow and dull; and the latter, when inclination and perhaps large profit is superadded, easily enables one to see no wrong, or but little, and that a material wrong in a course which may seem to him to offer safety to the life or liberty of his client, exemption from loss, injury or damage to that client, and a large measure of success and of gain, and increased prestige and renown to himself. To reject the wrong and pursue the right requires a morally brave and intelligent man, and the ability to do this, coupled with the doing of it, combined with even ordinary attainments, will result in making and perfecting a noble citizen, an excellent lawver, and a man without stain, or one who lays no pretensions to either talent or genius; while the reverse, combined with energy, shrewdness and a fair knowledge of the statutes, may bring a measure of success, a certain reputation for skill and ability among men, yet the world has not been made better thereby, the standard of society has not been elevated or advanced, and that man has contributed nothing to the general good.

Given then an applicant for admission to the bar, with well-grounded principles, accustomed to being guided by them first

in all his conduct, and with the fixed determination to continue to be so guided and directed during life, such an applicant, in order to be able to stand as a lawyer upon the high plane from which a man can view principles rather than particular cases. and appreciate and grasp them in all their length and breadth, I would say that no fixed time can be set in which the information necessary to the proper equipment of a lawyer for practice can be acquired. Let him read rather the history of the world, and note with Blackstone's description, the gradations through which man has passed, from a solitary creature to a small band of individuals, then to the tribe, then to the aggregation of tribes. forming a nation, each of these factors, as they discovered that some rule or order was necessary for their guidance and protection, and having made that discovery in the first instance, that others were necessary and how they were arrived at, adopted and put in force, in some instances by mutual consent, then by smaller bodies, chosen from their number, or by the patriarch, the head man, or the chief of the tribe, and afterwards by the king, and so on until we pass through from the absolutely despotic monarch with his arbitrary decrees, to the limited constitutional monarchy, to our own great republican system. this study is to be found, and will be found the first, and to me the most striking, view of the science of law. Taking that study as the groundwork of the second branch of necessary qualifications, and upon it I would base all subsequent study, then a comprehensive course of study, so arranged as to exclude from the mind of the student every thought of particular cases, and fix bis attention absolutely upon the broad science of law, the reasons, and the necessity for its existence, as written in the older and most comprehensive elementary books, would be recommended as the next step to be taken. These two steps having been thoroughly taken and their subject-matter fully impressed upon the mind and the memory of the student, he might then advance and enter upon the study of the general principles of modern law, still avoiding anything having special application, or tending to raise in his mind any idea of what is known as

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class law, and having mastered the general principles of this modern law applicable, no matter how expressed, or in what language written, and in force to a considerable extent in all the countries commonly designated as civilized—like the traveler who has thoroughly mastered the geography of the globe, and is then prepared to traverse it, and upon arriving at any given destination to find himself comparatively familiar with that which is before him: let the student turn to the special jurisprudence of his own land, and familiarize himself with its political structure; then let him turn to the judicial, and having mastered the leading principles of the constitution and the laws of the United States, he will come to those of his own State, and then for the first time I would have him consider matters of detail, that is, matters of application, not as distinguished from, but in connection with scientific principles. Matters of practice are best learned, in my opinion, by not study alone, but that combined with the actual doing of them. An object lesson is most striking and effective, and therefore productive of much better and more direct results than the study merely of illustrated theory or principle, and for that reason a thorough knowledge of that which we might term the Code of Practice, is best acquired either in the office of an active practitioner or by practical methods now of general use in the law schools of the country. The statutes having been learned, and the student having thus acquired that practical knowledge of their use above indicated, and which cannot be acquired from books, the student is readv to make application for admission to the bar.

I think this discussion can be carried a step further. An applicant, except from certain privileged law schools, for admission to the bar in Georgia, is required to undergo an examination by a committee of lawyers appointed by the judge of the superior court. That committee is usually appointed during a term, and is composed of experienced, active members of the bar, who frequently are occupied with their own pressing cases, have but little time to devote to the duty imposed upon them, and who feel but little interest in the matter, and it is often flippantly

said. "Let all applicants pass, for if there is nothing in them they can do no harm, as the people will soon let them alone, and they will sink or turn to other avocations." For these and many other reasons the examination of an applicant has come to be almost entirely a matter of form in Georgia, and few or none are If the standard is to be maintained, espedenied admission. cially if it is to be elevated, and not allowed to be lowered, this system of admission ought to be abolished, and in the opinion of the writer, no better substitute can be found than the creation of a State Board of Examiners, who should assemble annually or oftener at the capital, and examine rigidly each applicant for admission and authority to practice law in the courts of this State. If that board was properly constituted and performed its duties thoroughly, its splendid work would soon make itself felt, and the saving no longer be extant in Georgia that any owner of a Code of Georgia can, with it and it alone, qualify himself for admission to the bar, become admitted, and with that book, a tencent bottle of ink, a pen and a quire of legal-cap paper, enter upon the practice of the most laborious, the most exacting and most cultured of all professions.

B

### PAPER BY MR. ROSSER.

Reason and experience both affirm unmistakably that the public is interested in the qualifications possessed by candidates for admission at the bar. The public would have but little interest if his stupidity or lack of skill alone affected himself, but they comparatively affect the lawyer little, the public much. The stupid or unread lawyer is a stranger to the humiliation that unfitness for his calling ought to bring (he is usually protected by a conceit not unknown to the profession), and, no matter what else he has not learned, he has too well learned the old legal saw to risk his own property on his own practices. But the real wrong falls upon others who have neither the time nor the means to determine the difference between a lawyer and

the dolt upon whom a too generous judge has bestowed a license to practice law. To administer justice under our system, there must be attorneys, judges and jurors. We select for jurors men upright and intelligent, and for judges men of learning and integrity. And individual and public safety none the less demand that no one should fill the office of attorney except he be a man upright, skilled and learned. That certain qualifications should be required as to judges and jurors no one has donbted. But too often for the public weal and the honor of the profession, we hear, both from laymen and the profession, that nothing save the will of the applicant should stand between him and the bar—that public justice should not be looked to, or considered.

That there should be qualifications sine qua non the thoughtful everywhere admit; about this only the careless contend. The delicate question to be solved is what qualifications shall be required? What endowments? What acquirements? would manifestly be unfair to demand the highest endowments. All those possessing such endowments do not make a multitude. The public interest demands that no man shall be an officer of justice unless his native intelligence reaches a healthy average. The public's duty is to avoid stupidity and diseased deformity, but has no right to demand that she shall be served by genius alone. In watching the public safety, we must also guard the right of the individual. Every man has an inherent right to offer his services to the public, and the denial of that right can be justified only by necessity. No such necessity can possibly arise if he presents the average healty endowments cultivated to the safety point. To deny him access to the public service when he presents these is tyranny.

But endowments are not enough; he must have acquirements. The soil, no matter what its fertility, will not produce a harvest without cultivation. The public cannot justly demand the highest possible cultivation; it demands cultivation at all simply in self-defence and only to an extent which reasonably insures the public peace and safety. The highest cultivation is

left to individual taste, interest and ambition. Nor can it be reasonably demanded that the applicant shall be learned in all the branches of the law. It is enough that the foundation is laid—trusting in practice, age and experience to build and garnish the edifice. The State has no right to demand that the applicant shall have the learning of Blackstone, but she should see to it that the applicant for admission to the bar should have learning enough to wisely manage such affairs as would naturally fall into the hands of a beginner. The State should not be called upon to furnish as licensees ready-made Supreme Court judges, but it would at least be fair to demand skillful justice court lawyers with ability enough to fairly manage a stray superior court case.

Our Code has reasonably and fairly named the qualifications necessary for admission to the Georgia bar. The applicant must be of the male gender. Georgia is not yet ready to swap wifehood and motherhood even for female legal lore. The Georgia Code does not lend its influence to bring woman down from her present high estate. He must be a citizen, familiar with the people, the customs, institutions and civilization of the State, and presumably patriotic, proud of her past and hopeful He must have a good moral character; must have it when he seeks admission to the bar: must not be taken on trust that he will build up a good moral character after his admission. The demand is not for a good reputation, but for good character. He may start with little learning and time may be trusted to furnish more; but the law is imperative that he must, before he starts, have a good moral character. Such a character is never more needed to sustain himself and to protect the public than on the day of admission to the bar.

Before his application he must have read law. There is no effort to limit his amount of reading. He is to read law—a term as broad as the universe. The examination he must stand fixes things he must necessarily read, but he is not limited to that. He may take as wide a range as he pleases, to be determined only by his taste, his ability, and his leisure. He may

read everything from the Bill of Rights and Constitution of his State to the charter of his city, from the law of nations to the ordinances against disorderly conduct.

But there are some things which he must not only read, but know. The public safety demands that the public, through its judicial officers, examine him touching his knowledge:

1st. "Of the principles of the common and statute law of England of force in this State."

2d. "Of the law of pleading and evidence."

3d. "Of the principles of equity and equity pleading and practice."

4th. "Of the revised Code of this State, the Constitution of the United States, and the rules of practice in the superior court."

The examination is not to be privately had in a corner, but it is to be done in open court. Nor is it to be matter of form, but the "judges are required to be strict and to reject any applicant who does not undergo a full and satisfactory examination."

It is submitted that these provisions of the Code fairly protect the public, and are justly careful of private rights, do not unjustly close the bar against average ability and honest industry, nor do they too widely open it to the stupid, the idle, the vicious. Without average healthy endowments the applicant could not master the subjects upon which he is to be examined, and if he has learning enough to stand the full and satisfactory examination required by the Code, he will have all the learning that the public can reasonably expect from the beginner. He may not have skill enough for a major-general, but he will know enough of the tactics to play the rôle of corporal.

That in the matter of admission to the bar there has been abuse is not the fault of the law, but it is to be laid to the charge of those called upon to administer it. The responsibility of rejecting an unworthy applicant is not a pleasure, and while the judge and the committee of examination are each trying to avoid the unpleasantness, the applicant usually slips in. Then,

too, the committee and the applicant are usually personal and political friends and neighbors, and by reason of these personal and local influences the committee are generally good enough lawyers to find some excuse to justify the applicant's admission. The difficulty is in the administration of the law, and not in the law itself. The question of admission to the bar should be removed from all local influences; not otherwise will there be fair, full and satisfactory examinations. Let there be a Board of Examiners appointed by the Governor or by this Association, before and by whom all examinations shall be had, and the abuse heretofore felt will be at an end.

C

#### PAPER BY MR. ARNOLD.

What qualifications should be required for admission to the bar?

This is a hard question,—hard, because of the difficulty of doing justice to the bar and public, and at the same time justice to all applicants for admission to the bar. In order to obtain applicants fitted for admission, we should not go to extremes of severity and prescribe standards which may cut off the worthy and struggling young man. We all know that no man starts out as a lawyer upon his admission to the bar. Only actual practice develops him. We cannot require that every applicant shall be a genius or a prodigy of learning; but we should prescribe standards of reasonable information, and especially of high character. All applicants who have any place at the bar should, before admission, show an understanding of the history and general principles of the law, and should produce evidence of high moral character.

The subject naturally divides itself into two branches: First, through what course of study and experience should the applicant go to become qualified? Secondly, how shall the court hear evidence, and determine the fact of such qualification? If we considered what the qualifications and their evidence in the

abstract should be, without reference to what is in reach of the average applicant, the question would be somewhat easier. this view, we would bring him up to Lord Bacon's three requisites for a complete man, that "Reading maketh a full man, conference a ready man, and writing an exact man." ingly, we would put our candidate through a course of study at some thorough law school, involving a satisfactory completion of such subjects as the English Common Law, Pleading, Evidence, Equity, Torts, and Contracts. This schooling should be interspersed with moot courts and trials, and the drawing of pleadings in fictitious cases. This would ground the student in the general history and theory of the law, and would give him that polish and general learning, the lack of which is so apparent with some of our busy, practical code lawyers. Upon finishing his course at the law school, evidence of proficiency, either in the shape of a diploma or otherwise, should be had from the instructors. This is necessary, because we all know that a mere course at college, without more, means very little. mean opportunity wasted, and while a course at school is proof of opportunity, it should be supplemented by the evidence of the instructors that the student properly used his opportunities. Having completed his course at the law school, we would next put our student through a course of study and work in some reputable lawyer's office, involving assistance to the lawyer by drawing pleadings, helping with his clients and cases, watching the courts, and getting generally the practical points of actual practice. This is at once the conference and writing spoken of by Bacon, that will make a man both ready and exact. Before admission the lawyer with whom the student has been associated should give evidence of the applicant's qualifications, and especially of his character. No one can understand his reliability and traits of character like this lawyer; he has seen the student in the daily, dull routine of actual practice, and knows his real worth. These points are hard to decide by a single examination.

We have now grounded our student in theory and practice, and have taken the evidence of those who know; but the court

lacks information of his proficiency, and hence an examination in open court should be had. To this end there ought to be a standing committee in each circuit to conduct such examinations. The court would thus have the examination, aided by the other outside information, as a guide to act upon. Such examinations as now gone through with are hastily conducted by those unacquainted with the applicant's weak points, or, if acquainted, generally willing to extend him too much charity. Besides, all applicants cannot show either their learning, experience, or traits of character in one such examination as we now have. conditions may affect him too favorably or unfavorably on that one occasion, and thus create erroneous impressions. A self-confident, voluble man, with little real knowledge of law, may conceal his ignorance on this occasion and make a good impression: while an embarrassed and slow talking, but thorough and reliable young man, who really knows it all, may make an unfavorable impression. Right here comes in the importance of having the evidence of men who have seen the applicant through a long course of study and work. Having passed a satisfactory examination, we now have an applicant for admission who is qualified from an ideal point of view.

But it is manifest that the views just expressed would prescribe qualifications which are beyond the reach of many, or Few are able to attend a law even a majority of applicants. school, and while the majority would be able to obtain an entrance into some lawyer's office, others, still, are without means to remain idle and are compelled to follow some employment while undergoing a course of study. It is unjust to the ambitious youth to deny him a chance to enter, merely because he is without means to undergo the same preparation that is open to another more fortunately situated. One man with six months' study, alone and unaided, may learn more than another with a two years' course at a law school. In fact, more depends on the man than the opportunity. What means, therefore, are adopted to qualify the applicant should be left to such applicant. matters not whether his studies have been by the light of a pine-

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torch in some humble cabin, without aid or incentive except that which comes from a strong mind and a settled determination to succeed: or whether, fostered by wealth and influence, he has had showered upon him all the instruction and culture afforded by the greatest intellects in the land. The question, at last, should be, not has he had an opportunity to become qualified. but, is he qualified? And without inquiry into what courses the applicant has been through, the only practical and just test is a sifting and thorough examination in open court by a carefully selected standing committee, appointed in each circuit, accompanied by full and satisfactory evidence of reputable lawyers as to the character and qualifications of the applicant. is, in a measure, provided for by sec. 392, Code. It is true that this single examination furnishes much room for the admission of incompetent men, but we can adopt no other just method. and we had better err on the side of leniency than severity. The Code, secs. 391 to 396, furnishes a reasonably fair method of examination, except that there should be a standing committee, as just said. Special committees as now appointed are too generally partial to the applicant, and are picked up at random. Moreover, the average busy, practicing lawyer is not competent to examine an applicant for admission; he has, most likely, forgotten all the elementary and historical law found in Coke and Blackstone that he ever knew, and many practical, capable lawyers could not to-day stand an examination for admission to the bar on these ancient subjects. If the standing committee is carefully selected for this work, they can give the matter system-Another suggestion is that the decision of the atic attention. standing committee as to the competency or incompetency of an applicant should be res judicata for some length of time, and there should be a provision that an applicant who has been refused admission should not be allowed to apply again for twelve months, or some such period. Again, while an examination away from his residence might conduce to impartiality, still the examination should be had at the residence of the applicant, where his record and character are better known and more easily

ascertained. And it would be a good regulation to require every applicant to reside for a certain length of time, say twelve months, again in the circuit where he proposes to be admitted, so that he may better be found out.

But, as I have said, we should not attach too much importance to qualifications of mere learning before admission. legal bent of mind, good habits and strong traits of character are more essential to qualify than mere book-learning, and these qualities only come out in the actual practice. An aggressive. energetic nature, combined with what is usually called "common sense." is more essential than all the cumbersome learning Many a man who now holds his professor's chair in of Coke. some law college, or has written learned legal treatises, and who could stand an abstract examination on any conceivable legal subject, but who is still without originality, judgment or tact, would be less than a match in the actual conduct of a cause for the merest tyro at the bar. If a man comes to the bar poorly qualified, and remains so, he will soon be found out; he will do little injury to the public. Good lawyers will be all the more appreciated by the contrast. I have always thought that those who patronized unworthy and incompetent lawyers deserve no better than to lose. They will ascertain more about the lawyer next time.

No other suggestions that are of any utility occur to me, although this is a subject upon which one might talk for a day.

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## APPENDIX 9.

# REPORT OF COMMITTEE ON FEDERAL LEGISLATION.

To the Georgia Bar Association:

The Committee on Federal Legislation has not been embarrassed by the richness of the material which has come under its notice in the endeavor to report the result of congressional ac-The sessions have been so largely devoted to the consideration of the Silver and Tariff questions that little time has been devoted to other legislation. Important enactments carry into effect the Paris Arbitration between the United States and Great Britain, limiting territorially the destruction of fur seals: inhibiting certain methods in the pursuit of that animal; and establishing a close season within the possessions of this govern-This belated, though commendable, solicitude for the pathetic tribulations of the seal seems to have attracted the legislative mind toward the animal kingdom in general, and now it encroaches seriously upon the resources and liberty of the citizen to kill, wound or capture any animal or bird in the Yellowstone If an animal is dangerous he must look out for his own Who is to be the judge of the destructive tendencies of the particular beast is not stated, but it may be of interest to learn that the obligation rests upon the Secretary of the Interior to acquaint himself with the family history of all fish frequenting the streams of that locality, and prevent, by appropriate proclamations, the disciples of the gentle Walton from annihilating the race. A law which deserves to be copied elsewhere prohibits the sale of intoxicating liquor within four hundred feet of any school, church or private residence in the District of Columbia. This need not excite undue alarm, since hotels are

within the exception. Certain amendments have been made to the act designed to prevent collisions at sea, prescribing the location and character of lights to be employed; and by swearing to his manifest and delivering the same, the master of a steamship, which has been trading between the ports of the United States and those of foreign countries for at least a year, may have his vessel entered. The great bridge which is to connect New York and New Jersey has been authorized by Congress. and I'tah may become a State upon adopting a constitution. The purchase and coinage of silver bullion have been discontinued, and the Chinaman must have his interesting features subjected to the preserving methods of the camera, or leave. These comprehend, so far as your committee is advised, the Federal legislation of general interest. Acts designed to limit the power of United States judges territorially in granting extraordinary relief, and amending the Court of Appeals Act so as to permit review by that tribunal in the appointment of receivers, are now pending. Both of these acts should become It may be theory only, but it seems right that he who undertakes to affect immense properties by a stroke of the pen should have as witnesses to his exercise of power the people and the surroundings where and upon whom his blow is to take effect. A just judge will not mind such precautions; the unjust judge needs them. Your committee abstains from suggestions as to Federal legislation. The tendency of the times, accentuated by the activity of the Federal courts, is so decidedly toward invasion of the few rights left to the States, that if Congress is willing not to legislate we had best not disturb it. Any superfluous energy we may desire to throw into suggestions may be turned toward the Georgia Legislature, which will have to listen, even if it does not act. We have Federal legislation enough to last a century.

Your committee leaves Congress in the midst of tariff debate and tariff conference. This is a question of no importance to the bar. Whoever or whatever prevails, the lawyer will still continue to pay extravagant prices for the privilege of living in TI GEOLGIA DAN ASSOCIATION.

a manner satisfactory to himself and commendable in the eyes of the general public. His cigars will not be cheapened, and as the aromatic suggestions of the julep steal into his senses, the sad and painful conviction will still be with him, that from glass to straw the only free and unprotected element which will add to his fleeting enjoyment will be the mint which nature gives.

WALTER G. CHARLTON, Chairman.

# APPENDIX 10.

# SYMPOSIUM ON THE INSOLVENT TRADERS' RECEIVERSHIP ACT.

#### PAPERS BY

HON. F. D. PEABODY, HON. N. J. HAMMOND, HON. F. H. MILLER.

## A

## MR. PEABODY'S PAPER.

On September 28, 1881, the General Assembly of the State-of Georgia passed "An Act to authorize proceedings in equity in certain cases of insolvency," etc. Acts 1880-1, p. 124. This act is found in the Code of 1882 in sections 3149(a) to 3149(g) inclusive.

On November 12, 1889, Acts 1889, p. 74, section 3149(a) was amended by requiring that "at least three unsecured creditors, or creditors representing one-third in amount of the unsecured debts," etc., "shall be necessary parties," etc. And the act, as then amended, and in its entirety as it now stands, together with the amendments hereinafter considered, is set forth in full in an appendix hereto, the parts that might be omitted being in brackets, and the amendments that might be added being in italics.

Here, then, is the machinery, provided by law, for the protection of creditors in Georgia, that class whom Mr. Justice Hall, in 75 Ga. 712 (2), declared to be "a favored class under our law."

Let us examine its workings in the light of judicial interpretation. In 69 Ga. 497 (4), Jackson, C. J., said: "The great purpose of the Act of 1881 was to help creditors get at the II GEORGIA DAR ASSOCIATION.

debtors' property, if a trader and insolvent, rather than help that debtor and trader." Does the act measure up to this its declared object?

In 67 Ga. 52, Crawford, J., says: "But it was never intended to interfere with pre-existing liens," etc. "Before the complainants were entitled to an injunction and receiver, they should have shown assets more than sufficient to pay all the judgment and special liens."

In 68 Ga. 531, Jackson, J., says: "It will be seen by the act that the jurisdiction of equity to intervene and take possession of the property of the trader, at the instance of the creditor, rests mainly upon the insolvency of the debtor. It is not the mere failure to pay, but it is the inability to pay by reason of insolvency that gives this extraordinary remedy."

In 69 Ga. 491 (2), Jackson, C. J., says: "Mark these words, 'a trader or firm of traders,' in the first section; certainly if the firm has been dissolved, the act will not apply. It must mean a firm when a failure to pay and the insolvency have occurred, and when the bill is filed. So in respect to a single trader. . . . . It seems to us wiser and better to follow the plain words of the act, and to hold that the act means to confer on the court of equity this extraordinary power to administer while in life the lands and tenements, rights and credits of a trader while he 'is engaged as a business' in trading."

Again, in 74 Ga. 763, Jackson, C. J., held "that even when one of a firm of insolvent traders sold out to the other, the purchaser assuming all the debts, that this was such a dissolution as would defeat proceedings under the act." In short, that a mere dissolution of a firm, or the sale of the stock, either by a firm to a third party, or to one of the members, or the sale by a single trader, or the mere closing of doors and cessation of business, . . . "ceasing to trade," would prevent the filing of a petition under this act.

In both the 69 Ga. 496, and 70 Ga. 284, it is held that prior fraudulent liens may be attacked, if still a trader, as incidental to power of collecting assets.

In the 74 Ga. 493, where a bill under this act was filed in office on the night previous to the execution by the firm of the assignment containing preferences, which it seems to have been its purpose to set aside, but this alleged filing occurred previous to the sanction of the bill by the chancelior, by which a temporary restraining order was granted and a receiver appointed temporarily, Hall, J., held that such filing did not operate to defeat the assignment, and the bill could not lie, the "assignors having ceased to be traders."

In 71 Ga. 678, Blandford, J., held that the moving debt "must be a debt connected with the trade which is pursued by the trader"; and in the same case it was declared, "This act provides a very harsh and summary remedy. It is in derogation of common law, and should be strictly construed and strictly pursued, and the party seeking the benefit of it must bring himself clearly within not only the spirit and meaning, but the letter of the act; he shall take nothing by intendment."

In 76 Ga. 87, Jackson, C. J., held that a bill that was sworn to by one of the attorneys for the complainant, "to the best of his knowledge, information and belief," was not properly verified; and in 88 Ga. 80, Simmons, J., held that an "affidavit that the facts stated in the foregoing petition, as far as they are stated on his own knowledge, were true, and so far as stated upon the knowledge of others he believed them to be true," was insufficient.

Thus at the door of the Temple of Justice stands the blind goddess, and with grim irony says to this "favored class":

- 1. Thou shalt not enter here unless, like the Jesuits of old, you come in parties of three, or will swear that your demand is equal to one-third of a sum, the amount of which you have no possible means of knowing.
- 2. Thou shalt not enter here, if your debtor firm have dissolved partnership, even though the individuals of the firm are still in possession of the partnership assets.
  - 3. Thou shalt not enter here, if one member of your debtor

firm has sold out to the other member, even though the latter is in possession of all of the firm's assets, and has agreed to pay all of its debts.

- 4. Thou shalt not enter here, if your debtor, be it a firm or an individual, shall have sold out the assets of the firm and pocketed the money, and coolly quotes Tweed, and asks you, "What are you going to do about it?" and this, too, if your goods have but just been unpacked and placed in stock, and the purchase price not due for months hence.
- 5. Thou shalt not enter here, if your debtor closes his doors and ceases to be a trader, although he be insolvent, and perchance you can see your goods through the glass front.
- 6. Thou shalt not enter here, if the judge has not sanctioned your petition and granted an injunction prior to an alienation by the debtor making preferences, even though you have filed your petition, in terms of the statute, before the transfer by the debtor, and your judge be off on his vacation.
- 7. Thou shalt not enter here, if your debtor dissolves partnership, sells out, or closes his doors, even though he has plastered his stock all over with liens, including the usual ones to the wife, the brother-in-law, and the father-in-law, that fairly smell to heaven with the reeking odor of fraud.
- 8. Thou shalt not enter here, unless the debt due you is connected with the business in which the trader is engaged, even though your trader is insolvent, and you have two companions in distress, and your claims be past maturity.
- 9. Neither shalt thou enter here, unless you shall have waited until your debtor has wasted his substance and has nothing left wherewithal to pay his debts, and you feel that you can safely risk your immortal soul by taking a guess under oath, that he is insolvent.

Can this act be made to square with its declared intention, by proper amendment? Is there enough of life left in the parent trunk to warrant the grafting on of new branches?

Suppose section 3149(a) were amended by adding at the end thereof: "provided, that in all cases one unsecured creditor may

file the petition, but that as many as two others shall join him by or before the hearing for the appointment of a permanent receiver, unless the amount of his demand is equal to as much as one-third in amount of the unsecured debts of such insolvent debtor."

Suppose section 3149(d) were amended by adding after the word "bill," in the fourth line, the words, "or within thirty days prior to said filing," and by adding the same words after the word "bill" in the fifth line of said section? Also by adding at the end of said section: "It shall not be necessary to secure the sanction of the judge before filing the petition in the office of the clerk of the superior court."

And suppose section 3149(f) were amended by striking out all after the word "manufacturer," in the next to the last line thereof, and adding in lieu thereof the following words: "or who has been so engaged within thirty days prior to the filing of the petition," and also by adding the following: "No dissolution of a partnership, nor change of partnership, by a firm of insolvent traders, nor the formation of a partnership by a single insolvent trader, nor the sale, alienation, assignment, the parting with the effects of the insolvent firm of traders, or single insolvent trader, nor the closing up of the business, nor the ceasing to trade by either a firm of insolvent traders, or single insolvent trader, shall operate to prevent the filing and proceeding of the petition provided for under this act."

Would it not be well to amend the whole act, by striking out the word "bill" wherever it occurs, and substituting the word "petitition" therefor?

Would it not also be well to add another section as 3149(h), covering the case where goods have been obtained by fraud, and in such cases allowing such vendor so defrauded to identify the goods that may be in possession of said insolvent trader, and rescind the contract of sale and retake his goods, without prorating with other creditors.

Suppose something like this were added: "Section 3149(h).



Recinding contract of sale, where goods obtained by fraud: When any creditor, his agent or attorney shall make affidavit that goods were obtained from him by the insolvent debtor by raud, and that he believes that such goods, or a part thereof. are still in the possession, custody, or under the control of such insolvent debtor, or some person for him, then the judge shall by his order grant leave to such creditor to make search through the assets of such insolvent trader, after the same shall have been put in the hands of a receiver, and make a schedule of such goods as he may be able to identify and swear to the correctness of the same. And upon the final hearing of the cause, should it be found that such goods so identified were obtained from the vendor by fraud, with no intention of paying for same, then the contract of sale shall be declared rescinded, and the title to the goods to be in the original vendor, and such goods, or the proceeds of the sale of the same, shall be delivered to such vendor."

It might be well to amend the act throughout, to make it conform to the existing practice, and legal phraseology,—for instance: "A court of equity," in section 3149(a), might with propriety be the "superior court." In the head-line to section 3149(b), "Chancellor's power," etc., might be "The judge's power in such cases." And these words in same section: "The chancellor, under such proceedings as are usual in equity," might be stricken out, and the following substituted therefor: "The judge of the superior court." This would also meet the objection about filing urged by Justice Hall, in 74 Ga. 493 7. And in section 3149(g), wherein the word "chancellor" occurs, it might be stricken out and the words, "The Judge of the Superior Court," substituted therefor.

It has been suggested to amend the act so that the remedy would lie upon the continual refusal to pay a debt, for a certain number of days after maturity, rather than upon insolvency. This would change the whole character of the act, as insolvency is the keystone of its arch, in its present shape, and such change would be open to grave objections.

It might not, however, be objectionable to make the failure or refusal to pay a debt, for a certain number of days after maturity and demand, say thirty days, *prima facie* evidence of insolvency, on proof of which the burden would be shifted to the debtor, to show that he was not insolvent.

#### APPENDIX.

RECEIVER OF ASSETS OF INSOLVENT TRADERS. Section (3149a). In case any corporation not municipal, or any trader or firm of traders. shall fail to pay at maturity any one or more matured debts, payment of which has been properly demanded of such debtor and by him refused, and shall be insolvent, it shall be in the power of the [court of equity] superior court, under a creditor's [bill] petition to which at least three unsecured creditors or creditors representing one-third in amount of the unsecured debts of such insolvent corporation, trader or firm of traders, whose debts are matured and unpaid, shall be necessary parties to proceed to collect the assets, real and personal, including choses in action, and money, and appropriate the same to the creditors of such trader, firm of traders, or corporation. Provided, that in all cases one unsecured creditor may file the petition, but that as many as two others shall join him by or before the hearing for the appointment of a permanent receiver, unless the amount of his demand is equal to as much as one-third in amount of the unsecured debts of such insolvent debtor.

Section 8149(b). [Chancellor's] The Judge's Power in such Cases. [The Chancellor under such proceedings as are usual in equity.] The judge of the superior court may grant injunctions, and appoint receivers for the collection and preservation of the assets in the cases provided for by this [bill] petition, and may at any time appoint a master, and take all proper steps to bring the matter to a final hearing; and the fees of such master shall not be more than ten dollars per day for each day's actual service.

Section 3149(c). Who MAY BE PARTIES. Any creditor may become a party to said [bill] pctition, under an order of the court, at any time before the final distribution of the assets, he becoming chargeable with his proportion of the expenses of the previous proceedings.

Section 3149(d). No Preferences; Assets how Distributed. Upon the appointment of a receiver, no creditor shall acquire any preference, by any judgment or lien, on any suit or attachment under proceedings commenced after the filing of the [bill] petition, or within thirty days prior to said filing, and all assignments and mortgages to pay or secure existing debts made after the filing of said [bill] petition, or within thirty days prior to said filing, shall be vacated, and the assets be divided pro rata among the creditors, preserving all existing liens. It shall not be necessary to secure the sanction of the judge before filing the petition in the office of the clerk of the superior court.

Section 3149(e). ALLOWANCE FOR DEFENDANT'S SUPPORT. It shall be in the power of the judge to make a suitable allowance for the defendant for a support during the pendency of the proceedings, having in so doing respect to the condition of the defendant and the circumstances of the failure.

Section 3149(f). Who is a Trader? Any person or firm shall be considered a trader who is engaged, as a business, in buying and selling real or personal estate of any kind, or who is a banker, broker or commission merchant, or manufacturer [manufacturing articles to the extent of five thousand dollars per annum], or who has been so engaged within thirty days prior to the filing of the petition. No dissolution of a partnership, nor change of partnership by a firm of insolvent traders, nor the formation of a partnership by a single insolvent trader, nor the sale, alienation, assignment, the parting with the effects of the insolvent firm of traders, or single insolvent trader, nor the closing up of the business, nor the ceasing to trade, by either a firm of insolvent traders, or a single insolvent trader, shall operate to prevent the filing and proceeding of the petition provided for under this act.

Section 3149(g). [Chancellor] Judge MAY RECOMMEND DEBTOR'S RELEASE. It shall be in the power of the [chancellor] judge of the superior court, in his final judgment in the cases provided for, to express his opinion, if the facts authorize it, that, from the facts as they have transpired during the progress of the cause, that the defendant has honestly and fairly delivered up his assets for distribution under the law, and to recommend to the creditors of the defendant that they release him from further liability.

Section 3149(h). Rescinding contract of sale, where goods obtained by fraud. When any creditor, his agent or attorney, shall make affidavit that goods were obtained from him by the insolvent debtor by fraud, and that he believes that such goods, or a part thereof, are still in the possession, custody, or under the control, of such insolvent debtor, or of some person for him; then the judge shall, by his order, grant leave to such creditor to make search through the assets of such insolvent debtor, after the same shall have been put in the hands of a receiver, and make a schedule of such goods as he may be able to identify and swear to the correctness of the same. And upon the final hearing of such cause, should it be found that such goods so identified were obtained from the rendor by fraud, with no intention of paying for the same, then the contract of sale shall be declared rescinded, and the title to the goods to be in the original rendor; and such goods, or the proceeds of the sale of the same, shall be delivered to such rendor.

## MR. HAMMOND'S PAPER.

In the early history of equity jurisprudence, a receiver could not be appointed until after the defendant had answered. Later a receiver might be appointed before answer "where fraud was clearly proved by affidavits, or when it was shown that immense danger would ensue unless the property were taken under the care of the court." 10 Ga. R. 282. Before Georgia was founded, and ever since, a commission in bankruptcy might not issue against a trader unless the claims of the petitioner or petitioners reached certain prescribed amounts, or certain numbers of creditors petitioned, and with bond for damages. The basic idea of both the receivership and the bankruptcy was fraud in the debtor, actual or expected, because of pleaded facts.

Georgia's Traders' Act of 1881 (Code, §3149a) made a new departure. Under it any insolvent corporation, not municipal or any natural person, failing to pay any unsecured due debt on demand, might be at once ousted from possession of any and all property, and have it put into the hands of a court of chancery. No fraud need be alleged. No time need elapse after demand. The petitioner need not allege that he was at all apprehensive of the loss of his debt.

Interpreted by our highest court, this statutory power was unlimited, save that a chancellor might not properly, under it, interfere with pre-existent liens, or hinder or delay other parties in their common law remedies against the same debtor. 67 Ga. R. 52.

"Insolvency" was a necessary judrisictional fact, but whether that must be only technical or actual, and how it must be proved, was left to the discretion of each chancellor, not to be overruled unless he abused that discretion.

It reached all non-municipal corporations, ecclesiastical, educational, financial, and the rich and the poor, high and low, except the manufacturer whose product was less than five thousand dollars per annum.

It forbade all preferences or liens created after the appointment of the receiver; and that fact and the absence of other restrictions as to preferences gave the necessary impulse to have judges act precipitately upon ex parte statements.

That the judges were expected so to act is shown by its fifth section, allowing "the judges to make suitable allowance for the defendant for a support during the pendency of the proceedings, having in so doing respect to the condition of the defendant and the circumstances of the failure." The blow might kill instantly if not thus guarded. So guarded, the act kept the defendant alive to witness how badly courts can sell dry goods or run railroads. Perhaps this torture was a mistaken mercy.

The only kindness offered by the act to the court-fed debtor was, that if he had behaved well and delivered up all his assets "for distribution under the law," the court might "recommend to the creditors that they release him from further liability." It is doubtful whether any such recommendation has ever been made. Perhaps no one has ever asked for it, because all knew that the recommendation would not be a judgment, and would be utterly worthless. No wonder our Supreme Court, in 1883, said: "This act provides a very harsh and summary remedy" (71 Ga. R. 680), and then and since applied thereto the strictest construction. 74 Ga. R. 762; 87 Ga. R. 455, etc.

The amending act of November, 1889, required three such creditors, or creditors representing one-third in amount of the unsecured debts of such insolvent debtor, to put this machinery in motion. But this homeopathic dose of amendment is wholly inadequate to the disease of the law. We know that about the only change that effected has been that now more than one lawyer is sometimes allowed the fees for firing up and running the engine.

To the unfortunate debtor who has deceived nobody, and has not paid on one demand only because his debtors have failed to pay on his many demands, the remedy is "very harsh." The Supreme Court of the United States, in 17 Wallace's R. 486, in 1873, as to the bankrupt act, said it left, "in a great majority of

cases, parties who are really insolvent, to the chances that their energy, care and prudence in business, ay enable them finally to recover without disastrous failure or positive bankruptcy. All experience shows both the wisdom and justice of this policy. Many find themselves with ample means, good credit, large business, technically insolvent; that is, unable to meet their current obligations as fast as they mature. But by forbearance of creditors, by meeting only such debts as are pressed, and even by the submission of their property to be seized on execution, they are finally able to pay all, and to save their commercial character and much of their property." Under this law of Georgia there is no such chance or hope. Such a sword hanging over traders deters many from exercising their talents in that direction. The same applies to corporations. They are few or many in proportion as trade is dull or active. They are the very life of progress; for they are the safest form of the combined energy of the wealth and industry of many persons, some of whom could not be otherwise engaged in "enterprises of great pith and moment." is to the interest of the State that the energy of its citizens and of its artificial persons should not be stifled or even be put into trammeling harness.

This law demoralizes trade, because the stocks of the conservative merchants and the plants and machinery of well managed corporations may have their values and their usefulness, at any time and for any time, affected by the carelessness, misfortune, ignorance, or mismanagement of others in the same community. This is no fancy; we have seen and felt it here and elsewhere in this State.

Observation shows too that creditors have realized little if any benefit from this law. By the old law, they might have lost sometimes something which by this statute has been saved; but that is surely not generally certain when the debtors were honest. If guilty of dishonest dealings, endangering the creditor's rights, the debtor was amenable to injunction and receivership under the old law.

With dishonest debtors other considerations apply. Large

stocks may be bought, fraudulent preferences may be made, and they may, when they please, arrange for receivership, collude with real or pretended creditors, and use the machinery of this law, made for honest purposes, to cheat and defraud all not in their secrets. It need not be proved that such things have been done. The law is bad under which they are not only possible, but easily practicable; a law which does not deter from but invites the guardianship of a court of equity by debtors who can have the fees of their solicitors paid out of the property which should pay their creditors.

That law is injurious to our profession. The petition for a receivership is very simple, and requires but little skill for its beginning and but little responsibility in its conduct to the de-It is frequently founded upon a loose affidavit by one of the plaintiff's attorneys. The prayer for injunction and a temporary receiver is granted on ex parte showings, and practically as matter of course. An honest trader rarely resists. generally would be useless; for if not insolvent when the proceedings began, the publication that a receiver has his property destroys his credit. Other lawsuits may be settled by paying something to the creditor, out of which he pays his own solicitor's Here the interest of the lawver who files the petition is against settlement until a fund is brought into court. When it comes in, the solicitor of petitioner expects and usually gets out of it a fee in proportion to the whole fund, and not simply for his trouble and services. Other creditors, when made parties must contribute to his fee, and out of their dividends, if any, pay their own solicitors also.

This practice is inequitable, but has grown into strength because of timid and unwise acquiescence in the demands of those who first reached the chancellor with skeleton petitions.

In some cases these fees have been very large. If not too large in truth, they seem so to the public, and the bar and judiciary, because of them, suffer in reputation, though it may be sometimes undeservedly.

The size of such fees has made such business desirable. It is

even charged that some hunt for such cases. We should all pray, "Lead us not into temptation"; for surely the bar will fall from its high estate when, instead of having clients seek us, we shall hunt them.

But it may be said preferences are wrong. If so, change the law as to them. If this Act of 1881-9 were repealed, and no preferences allowed if made within a specified time before receivership under the old law, lenders of money would be afraid to increase past due debts and take mortgages and thus galvanize dying traders until they could get other credit, which would never be granted but for the apparent life given by the last loan. Lenders of money should find it to their interest to study the moral as well as the material risks which they assume.

It may be said this act takes the place of assignments, which are almost impracticable under our stringent law with respect thereto. If so, change the assignment laws. It is a perversion of the Traders' Act to allow a debtor to arrange his three debts, in the aggregate perhaps less than two hundred dollars, secure his banker and attorney, and then consent to a receiver of his own choice, all to be paid out of the estate, simply to enable him to quit business agreeably.

The Traders' Act is unique. There was nothing like it before its enactment, and none, so far as I know, have since imitated it, here or on either side of either ocean. It is bad for honest traders who cannot pay on demand, and bad for those solvent persons whose business is disturbed by unusual and unnatural conditions of the market made by sudden failure. It is bad for the bar. It is of even doubtful benefit to anybody. Amendment cannot cure its innate defects. It should be repealed.

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## MR. MILLER'S PAPER.

The Act of Congress which repealed the last bankrupt act, took effect September 1, 1878.

Since that date the various States of the Union have, under old or new laws, wrestled with the subject of insolvency.

On the 28th of September, 1880, the General Assembly of Georgia authorized proceedings in equity, in certain cases of insolvency, which act was embodied in the Code as Section 3149a and subsequently amended November 12, 1889.

Under this law three unsecured creditors, or one representing one-third of the amount of indebtedness, can put in motion legal machinery that will seriously embarrass, if not totally destroy, the credit of the trader or corporation proceeded against.

As the act applied only to certain cases, its constitutionality was doubted upon the ground that it was not a general law but class legislation, until the Supreme Court removed the doubt, July 8, 1891. After this the act was in effect put upon trial in the famous Ryan case, when the General Assembly limited the interlocutory power of the court by the Act of December 22, 1892, so that now no debtor can be imprisoned for contempt until, under questions summitted to the jury, the court upon their finding shall so decree.

Prior to the passage of this last act resort was frequently had by non-resident creditors to the Federal court, and cases arose which raised the question as to whether the State or Federal court first acquired jurisdiction.

On the 6th of June, 1892, the Circuit Court of Appeals of the United States, Fifth Circuit, decided that this act gave no aid to the jurisdiction of the Federal courts, and a creditor without lien could obtain relief only on the law side of that court. Subsequently the Supreme Court of the United States held, May 10, 1893, that a contract creditor who has not reduced his claim to judgment has no standing in equity to set aside a fraudulent conveyance, and on November 13, 1893, that the jurisdiction of

Federal courts in equity cannot be enlarged or diminished by State legislation. So that this act now stands as one that can be enforced only in the State courts, whether creditors are residents or non-residents of Georgia.

Since the recent rulings of our Supreme Court, that when a suit is once commenced under this law, no equitable relief can be obtained except by intervention therein; that all corporations, whether traders or not, are amenable to this procedure, and that it was not error to treat as assets still belonging to an insolvent corporation, its accounts, or books of account, transferred as collateral security, without executing a deed of assignment, it would seem that the judiciary are tending towards a construction of it, as if it was a State bankrupt law.

It is worthy of notice that in the administration of the debtor's effects, under this law, "a suitable allowance for the defendant for support during the pendency of the proceeding" is rarely set aside or asked for, and a final judgment from the court, that the debtor has honestly and fairly delivered up his assets for distribution, and that his release is recommended, is almost unknown to the profession.

On the 17th instant, a new bankrupt law passed the House of Representatives which authorized a petition for a discharge whenever an assignment has been made four months previously, in conformity to the State laws, which shall contain no other preferences than in this act permitted; but however favorable this may be, experience has shown that all bankrupt laws are expensive in their administration in the Federal courts, and this Georgia law, which has now been in operation sixteen years, and which, as to commercial transactions with traders and corporations, is professionally regarded as the procedure most to be relied upon for successful and prompt results, should be so enforced as to encourage an honest and fair delivery of all assets, and grant the debtor a discharge without going into the Federal courts in bankruptcy. The worst charges brought against this statute are, that many cases are instituted by the friends of the debtor to secure a receiver partial to him, or the preferences he has

made; that the receivers are generally appointed without bond or security; that after such appointment, rescission is allowed to be claimed in many instances of sales made, and title thus asserted to assets in the hands of the receiver which inure to the injury of the unsecured creditor.

These can all be remedied, and will be in time, as cases come up for judicial determination. I made no effort to collate the various decisions, to this date, of our learned Supreme Court construing this law, for they are well known to the members of this Association, and are all directed towards carrying out its spirit and intention. As interpreted by them, I believe the act a wise and salutary one, and that this Association should hold up the hands of the court in its administration for the good of both debtor and creditor. In the limited space permitted I confine myself to saggestions to carry out what I believe to be the intention of the learned author.

- 1. When the petition is sanctioned, direct a seizure by the sheriff as a temporary receiver, to hold until further order, but with leave to the debtor to dissolve the restraining order upon filing bond and security, approved by the sheriff, as in attachment cases, conditioned to pay the plaintiff's debt when judgment is finally obtained.
- 2. If fraud is averred by positive affidavit require defendant to give bond for his appearance to abide final decree, but require plaintiff to stipulate that they will carry into effect any recommendation of the court, as to granting a release to the debtor.
- 3. Refer the case at the outset to a standing or special master, according to the statute, and require his report as to the facts, particularly the validity and good faith of the plaintiff's debts, the amount of property in the hands of receiver, and all liens thereon.
- 4. Direct that no payment by consent of petitioners, or otherwise, of any preferred debt shall be made for thirty days, thereby placing the preferences on the same footing as those of voluntary assignment, under the Act of October 17, 1885.

In conclusion, if any light shall come from these suggestions,

I shall be profoundly grateful. I regard this Association as a body of watchmen legally appointed to tell us of the night, and never will darkness be so great as when interest in its welfare and desire for its success and prosperity shall cease on the part of the profession.

## APPENDIX 11.

## REPORT OF COMMITTEE ON MEMORIALS.

The duty of the Committee on Memorials, as laid down in our rules, is twofold: First, to prepare a biography of some distinguished member of the Georgia bench or bar, to be printed in our reports, along with a steel engraving of the subject. Secondly, to prepare brief sketches of the members of the Association who have died since the last annual meeting.

In discharge of the first duty, we have selected as the subject of a memoir the late Judge L. Q. C. Lamar, who was a Georgian by birth, and who claimed his citizenship in Georgia at the time of his death.

In the discharge of the second duty, we have found that the Committee on Memorials for 1892–1893 failed to report sketches of several of our prominent members who died during that year; and we have felt that it was proper for us, especially in view of a request of the Executive Committee to that effect, to embrace in this report sketches of those who died during that year, as well as of those who have died during the current Association year. The list includes the following names, all of them being men of distinction: Charles C. Jones, Jr., Augusta; A. Pratt Adams, Savannah; Robert S. Lanier, Macon; John S. Davidson, Augusta; Richard F. Lyon, Macon; Benjamin P. Hollis, Americus; James T. Nisbet, Macon; John Peabody, Columbus.

All of which is respectfully submitted.

WALTER B. HILL,
LIONEL C. LEVY,
A. H. MACDONELL,
J. F. DELACY,
POPE BARROW,
Committee.

### SKETCH OF MR. JUSTICE L. Q. C. LAMAR.

### BY WALTER B. HILL.

Lucius Quintus Cincinnatus Lamar was born in Putnam county, near Eatonton, Ga., September 1, 1825. The year of his birth witnessed the ratification of the treaty by which his native State ceded the territory which became the State of his adoption—Mississippi. Georgia, in her early history, was the most obstreperous litigant over whom the Supreme Court had original jurisdiction.\* Her resistance to its mandates led to the passage of the Eleventh Amendment; and her unconstitutional legislation first called into exercise the great powers of the court announced in Fletcher vs. Peck. Despite her recalcitrant behavior, she has had the honor of contributing to the Supreme Bench three members, Wayne, Campbell, and Lamar.

The father of Lamar was a Judge of the Superior Court of the Ocmulgee Circuit. He bore the name given to his son. A sketch of his life may be found in Miller's "Bench and Bar of Georgia." He died by his own hand at the early age of thirty-seven. His suicide was inexplicable. He occupied the highest judicial position in the State—the Supreme Court not being then established. He was fortunate in all the relations of life. On the Fourth of July, after listening to an eloquent speech by a young kinsman, and after receiving with much pleasure the compliments bestowed on the oration, he went home, kissed his children, walked into the garden, and shot himself.

Lamar graduated at Emory College, at Oxford, Ga., in 1845. He did not distinguish himself in college life. His endowment was genius rather than talent. He was capable of sudden spurts of intense application, but had not that continuous energy which wins class honors. He had a wonderful memory, of which he gave a signal proof in an address delivered at the commencement in 1890 of his Alma Mater. He took for his subject three speeches that he heard during his college career. One was

<sup>\*</sup>See Chisolm's Ex'r's v. Georgia, 2 Dallas, 419; Worcester v. Georgia, 6 Peters, 515.

the first commencement oration at that college, delivered by George F. Pierce, afterwards a Bishop of the Methodist Church. and perhaps the greatest pulpit orator the South has produced who was pronounced by Robert Toombs "the most symmetrical great man in body, mind, and soul, he had ever known—the Phillips Brooks of the South. One was a sermon by Bishop Soule: and the third was the first commencement sermon preached at Emory College, by Alexander Speer. In the address referred to. Lamar was able to repeat with entire precision. after a lapse of forty-five years, long passages from those dis-Although in the main he was a genial young man, vet at times he was dreamy and often melancholy. A companion of his youth recalls one occasion when in a debating society Lamer had made a brilliant speech. It had so far surpassed the expectations of his comrades that they crowded around him to extend congratulations; but the speech had fallen so far below the young orator's ideal that he sank back in profound dejection.

In 1846 he studied law in Macon, and was admitted to the bar in 1847. He began the practice of his profession in Macon; but the absence of immediate success and a disappointment in love (of which more anon) caused him to remove to Oxford, Miss., where he accepted the position of adjunct Professor of Mathematics in the State University—the principal in that department being Alfred Taylor Bledsoe, editor of the Southern Review. The best brains of the South contributed to the pages of this periodical, Lamar among the number. Its volumes are a treasury of good literature. Being unknown to the general public, they are a mine of wealth to the plagiarists. I was amused to discover in a recent book on Wit and Humor by a voluminous author who writes LL.D. after his name (Mr. William Mathews), long paragraphs stolen bodily from an article in that review.

Having returned to Georgia and located at Covington for the practice of law, Lamar was, in 1853, elected a member of the Legislature. He was elected as a Democrat, although his county

of Newton at that time had a Whig majority. Lamar had not been in the House more than a month before he came to the front as a leader. A contemporary gives this account of his first speech:

"During the session there were so many motions to suspend the rules to take up business out of its order, that a resolution was adopted requiring a two-thirds' vote to suspend the rules. In a day or two thereafter a resolution was offered to suspend the rules to bring on some important election, probably that of a Senator, and fixing a day for it. The Democrats, having a majority, would be able to elect their candidate. The Whigs opposed the motion to suspend the rules; and Mr. Thomas Hardeman, the member from Bibb, led in the opposition. speech against it; and on a vote being taken, the Democrats only having some twelve or fifteen majority, failed to carry it by two-thirds' vote—upon which there was consternation on the Democratic and rejoicing on the Whig, side. The Democrats felt they were caught in the trap, and many were the anxious faces on the part of the majority. The next day, on a motion to reconsider, Mr. Lamar made his first speech. He was then young, not more than twenty-seven-a handsome face, a full head of dark hair, with brilliant eyes, in figure rather below the medium height, handsomely dressed, with fine musical voice. He at once attracted the attention of the House. In a short speech of not more than thirty minutes he captured the whole Assembly. I remember how he scathed the motives of those who would thus seek to defeat an election that under the law and Constitution had been devolved upon the General Assembly.

"Such an excitement as was produced by his speech I never saw in that body. When he finished, no one sought to reply. A vote was taken, and a large majority reconsidered the action of the House of the preceding day, and the resolution passed with almost a unanimous vote.

"His speech was a remarkable exhibition of the power of the orator and logician, and his appeal to his opponents to step manfully and patriotically forward to discharge their duty was so overwhelming that all party spirit was subdued, even in the breast of the most bitter partisan, and none even ventured a reply."

In 1854 he returned to Mississippi and made his residence upon his plantation in Lafayette county. This was his final and permanent adoption of that State as his home. If any one wishes to see a picture "drawn out in living characters" of the times and the people with whom Lamar cast his fortune, let him read "A Southern Planter," by Mrs. Susan Dabney Smedes, a book which elicited Mr. Gladstone's enthusiastic praise. A

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New England critic has declared that the real Thomas Dabney, who appears in its pages, is as beautiful a character as Thackeray's imagination conceived in Sir Thomas Newcome. The most unsympathetic reader cannot fail to see in the simple annals of this true gentleman's life that side of slavery which made such men as Lamar its defenders. The society of that time and section had conceptions of personal right and honor which are "to the Jews a stumbling-block and to the Greeks foolishness." Lamar did not escape the influence of his environment. In one of his letters he writes that he had resolved "never to be a second in a duel." He illustrated the Mississippi idea of the writ of habeas corpus later in life, when he knocked down a United States marshal who, he thought, was about to arrest him wrongfully.

He was elected to Congress in 1857. Though he took the floor seldom, he became prominent as an advocate of States rights. In 1859 he uttered a prophecy which he fulfilled in 1860.

"For one," he said in a debate, "I am no disunionist per se. I am devoted to the Constitution of this Union; and so long as the Republic throws its long arms around both sections of the country, I, for one, will bestow every talent which God has given me for its preservation and its glory. . . . When the Constitution is violated, and when its spirit is no longer observed upon this floor, I war upon your government. I am against it. I raise then the banner of secession, and I will fight under it as long as the blood flows and ebbs in my veins."

He left Congress to take his seat in the Secession Convention of his State. Upon the breaking out of the war, he joined the Nineteenth Mississippi Regiment, of which he was made lieutenant-colonel, and afterwards colonel. His method of fighting was described as "wildly brave."

"He told one story about himself in the battle of Williamstown. The brigade commander was disabled, and he 'somehow' found himself leading the brigade. His regiment charged clear through the enemy.

"'It seemed to me,' he quaintly said, 'that we were all likely to be taken prisoners; so I gave the only command I could think of—to charge back again.'"

His health failing and compelling his retirement from the

army, he was sent by Jefferson Davis on a diplomatic mission to Russia in 1863.

"It has always been understood that the prime object of his trip was to secure a cessation of hostilities for six months through the friendly mediation of Great Britain, France, and Russia. His visit no doubt added much to the friendliness which England showed toward the Southern States. While he assisted in negotiating the Southern loan, he could not secure the recognition of the Confederate States as an independent power. In Russia and in France, Lamar performed very delicate diplomatic work."

General Alexander R. Lawton is authority for the statement that Lamar returned in 1864, fully impressed with the conviction that the fall of the Confederate government was only a question of time. He realized that the North could reckon not only on the bravery of its soldiers, but upon what Victor Hugo called "the cowardice of inexhaustible resources." But although hopeless of success, he remained in the service of the Confederacy until the end. Being physically unfitted for the field, he was attached to Longstreet's Corps as Judge-Advocate.

In 1866 he resumed work in the University of Mississippi, occupying first the Chair of Political Economy and Social Science, and, in 1867, the Chair in the Law Department. In 1868 he returned to the practice of his profession, and had a fair proportion of such business as came before the courts, though his practice could not be called extensive.

In 1872 he was elected to Congress. In order that he might have leisure and quietude in which to prepare a series of speeches which he proposed to make in his campaign, he retired to his plantation and erected in a secluded place a one-room log-cabin. This he furnished with a chair, table and mosquito-net, the latter suspended from the ceiling and stretching around him like a tent. There in serene contemplation he thought out his lines of argument, reading meanwhile as a mental tonic Macaulay's "History of England"; while outside the singing insects, in the felicitous phrase of Nathaniel Hawthorne, "sounded the smahorrors of their bugle-horns." Lamar was always an omnirous reader. As an orator, he could rely upon inspiration i



sense of the definition, "Inspiration is the product of a full mind." Like Macaulay, he could find no relief for fag of brain in reading trashy novels. His love of literature was intense; his reading wide and varied, both in the classics and the choice books of the English tongue.

For the first time since the war, the House of Representatives, which assembled in 1872, was Democratic. Lamar was chosen to preside over the caucus of his party, and made a speech of great power, outlining the policy which he thought should be pursued. During his terms in the House, being re-elected in 1874, and subsequently in the Senate, he interested himself in the question of improvements of the Mississippi, and was a friendly advocate of the Texas and Pacific Railroad.

The eulogist of Sumner, the defender of Jefferson Davis-in these two rôles Lamar figured in Congress. Are they capable of logical reconciliation? Except Robert Toombs, the grand old Lucifer, who declared, when urged to apply for a removal of political disabilities, that "he had never pardoned the North," it is certainly true that men of the South who were prominent in the agitation of secession, in the war, and in the Confederate government, have been equally prominent in the public service of the restored Union. Have they been enabled to do this merely by finding a working hypothesis; or is there really a ground upon which, without any sacrifice of intellectual integrity, a loyalty to the traditions and convictions of the past may stand unabashed side by side with hearty acceptance of the obligations and duties of the present? This is too large a question to enter upon here, although it lies legitimately within the purview of any attempt to analyze Lamar's character or to understand his public life. The basis of reconciliation is hinted at in Lamar's eulogy on Sumner, presently to be quoted. cerity of conviction, especially when held at the cost of life and fortune, will always command respect; but the man of the South claims more than that as due to the Southern side of the irrepressible conflict. Two theories—one magnifying the Union, the other magnifying the State-according to one of which the supreme allegiance of the citizen was due to the nation, and according to the other due to the State—emerged at an early period of American his-These contending theories were compromised in the Constitution, not settled by it. In favor of the view embraced at the South. there was as much of history, logic and patriotism, as in favor of the view championed at the North. Only the arbitrament of war could settle a controversy so radical in its nature, so tremendous in its import. To accept with unreserved satisfaction the decision of the appeal to arms involves no abatement of the claim, either of the sincerity or reasonableness of the convictions which the defeated party maintained in the struggle. This is. in mere outline, the basis on which the South asserts in the same breath her unshamed loyalty to her past, and her unstinted devotion to the "indestructible union of indestructible States." It may be doubted whether any person who was ranged on the other side of the contest is capable of that extension of intellectual sympathy which will enable him fully to appreciate this view; but even those who would utterly deny its truth must still rejoice that the citizens of the seceding States have found this mental attitude possible; for it is incontestable that a selfrespecting loyalty to the restored Union is a better basis for good citizenship than the half-hearted and reluctant allegiance of the repentant rebel and craven apologist.

On April 27, 1874,\* Lamar delivered the eulogy on Sumner, a speech which at once fixed upon him the gaze of the nation. In its result it was the first fulfillment of the famous prophecy with which Lincoln closed his Gettysburg speech. In describing Sumner's relation to the anti-slavery movement, Lamar showed that he was capable, not only of breadth of view, but of a wide range of sympathy.

"Charles Sumner was born with an instinctive love of freedom, and was educated from his earliest infancy to the belief that freedom is the natural and indefeasible right of every intelligent being having the outward form of man. In him, in fact, this creed seems to have been something more than a doctrine imbibed from teachers, or a result of education. To him it was a grand intuitive truth inscribed in blazing letters upon the tablet of his inner consciousness, to deny which would have

<sup>\*</sup>Cong. Record, Forty-Third Congress, p. 3110

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been to him to deny that he himself existed. And along with this all-controlling love of freedom, he possessed a moral sensibility keenly intense and vivid, a conscientiousness which would never permit him to swerve by the breadth of a hair from what he pictured to himself as the path of duty. Thus were combined in him characteristics which have in all ages given to religion her martyrs and to patriotism her self-sacrificing heroes.

"To a man thoroughly permeated and imbued with such a creed, and animated and constantly actuated by such a spirit of devotion, to behold human beings or a race of human beings restrained of their natural rights of liberty, for no crime by him or them committed, was to feel all the belligerent instincts of his nature roused to combat. The fact was to him a wrong which no logic could justify. It mattered not how humble in the scale of rational existence the subject of this restraint might be, how dark his skin, or how dense his ignorance. Behind all that lay, to him, the great principle that liberty is the birthright of all humanity, and that every individual of every race, who has a soul to save, is entitled to the freedom which may enable him to work out his salvation. It matters not that the slave might be contented with his lot; that his actual condition might be immeasurably more desirable than that from which it had transplanted him; that it gave him physical comfort, mental and moral elevation and religious culture not possessed by his race in any other condition: that his bonds had not been placed upon his hands by the living generation; that the mixed social system of which he formed an element had been regarded by the fathers of the Republic, and by the ablest statesmen who had risen up after them, as too complicated to be broken up without danger to society itself, or even to civilization; or finally, that the actual state of things had been recognized and explicitly sanctioned by the very organic law of the Republic. Weighty as these considerations might be, formidable as the difficulties in the way of the practical enforcement of his great principle, he held none the less that it must sooner or later be enforced, though institutions and constitutions should have to give way alike before it. But here let me do this great man the justice which, amid the excitements of the struggle between the sections now past, I may have been disposed to deny him. In this fiery zeal, and this earnest warfare against the wrong, as he viewed it, there entered no enduring personal animosity towards the men whose lot it was to be born under the system which he denounced.

"Though he knew very well that of his conquered fellow-citizens of the South, by far the larger portion, even those who most heartly acquiesced in and desired the abolition of slavery, seriously questioned the expediency of investing, in a single day and without any preliminary tutelage, so vast a body of inexperienced and uninstructed men with the full right of freemen and voters, he would tolerate no half-way measures upon a point to him so vital."



Referring to the olive-branch which Sumner had sought to hold out to the vanquished, he said:

"Conscious that they themselves were animated by devotion to constitutional liberty, and that the brightest pages of history are replete with evidences of the depth and sincerity of that devotion, they can but cherish the recollection of sacrifices endured, battles fought, and the victories won in defence of their hapless cause. And respecting, as all true and brave men respect, the martial spirit with which the men of the North vindicated the integrity of their devotion to the principles of human freedom, they do not ask, they do not wish, the North to strike the mementoes of her heroism and victory from either records or monuments or battle-flags. They would rather that both sections should gather up the glories won by each section, not envious, but proud of each other, and regard them a common heritage of American valor.

"Let us hope that future generations, when they remember the deeds of heroism and dovotion done on both sides, will speak not of Northern prowess or Southern courage, but of the heroism, fortitude, and courage of Americans in a war of ideas—a war in which each section signalized its consecration to the principles, as each understood them, of American liberty, and of the Constitution received from their fathers.

"Charles Sumner, in life, believed that all occasions for strife and distrust between the North and South had passed away. Are there not many of us who believe the same thing? Is not that the common sentiment, or, if it is not, ought it not to be, of the great mass of our people, North and South? Bound to each other by a common Constitution, destined to live together under a common government, forming unitedly but a single member of the great family of nations, shall we not now at last endeavor to grow toward each other once more in heart as we are already indissolubly linked to each other in fortunes?

"The South—prostrate, exhausted, drained of her life-blood as well as her material resources, yet still honorable and true—accepts the bitter reward of the bloody arbitration without reservation, resolutely determined to abide the result with chivalrous fidelity; yet as if struck dumb by the magnitude of her reverses, she suffers on in silence.

"The North, exultant in her triumph and elated by success, still cherishes, as we are assured, a heart full of magnanimous emotions towards her disarmed and discomfited antagonist; and yet, as if mastered by some mysterious spell, silencing her better impulses, her words and acts are the words and acts of suspicion and distrust.

"Would that the spirit of the illustrious dead whom we lament today could speak from the grave to both parties to this deplorable discord, in tones which would reach each and every heart throughout thisbroad territory, 'My countrymen, know one another, and you will love one another.'"

Lamar foresaw that the temper of public feeling among his



constituents was not in consonance with his utterances. In a letter dated June 15, 1874, he wrote to a friend:

"My recent speeches have not been prompted by self-seeking motives. It was necessary that some Southern man should say and do what I said and did. I knew that if I did it I would run the risk of losing the confidence of the Southern people, and that if that confidence was once lost it could never be fully regained. Keenly as I would feel such a loss,—and no man would feel it more keenly,—yet I loved my people more than I did their approval. I saw a chance to convert their enemies into friends, and to change bitter animosities into sympathy and regard. If I had let the opportunity pass without doing what I have. I would never have got over the feeling of self-reproach."

But in the campaign that followed, he was sustained. Doubtless it was as a pacificator that Lamar's greatest service to the country was rendered.

As an orator, Lamar stood in the front rank. He had that subtle power called magnetism, which enabled him to command the applause of, and to exert a mastery over, popular assemblies. It required a momentous occasion to arouse his great powers; but the greatness of the man was evidenced by the impression he made upon his contemporaries, that he would measure up to the demands of any occasion. His style had none of that efflorescence of verbiage and metaphor which Northern audiences (who would not tolerate it in a speaker of their own section) seem disposed to applaud in a Southern orator as being characteristic,—in the same way that France condones the excesses of the Gascon. His style was polished, but severely chaste and simple.

What John Bright called "the physical basis of oratory," Lamar lacked. He visited Paris in 1859, to consult physicians there in reference to cerebral disease with which he was threatened. He had frequent attacks of vertigo,—premonitory of a threatened paralysis. This contingency hung over his head like the sword of Damocles. The excitement of every speech was incurred at the risk of life. A weak man would have been unnerved by this tormenting consciousness; but Lamar acted upon the noble motto: Nec propter vitam perdere causas vivendi.

His mode of preparation for his speeches was peculiar. Re-

ferring to a statement in the press that all his speeches were written and memorized, he wrote to a kiusman in 1874:

"As to never speaking on any occasion without committing my speech to memory, I am forty eight years old and have never done such a thing but once or twice (on literary occasions) since I was twenty-one years old. I cannot write a speech. The pen is an extinguisher upon my mind, and a torture to my nerves. I am the most habitual extemporaneous speaker I have ever known. Whenever I get the opportunity, I prepare my argument with great labor of thought, for my mind is rather a slow one in constructing its plan or theory of an argument. But my friends all tell me that my off-hand speeches are far more vivid than my prepared efforts."

Further light is thrown on this point in an (unpublished) address of Hon. John W. Fewell, of Mississippi, delivered at Meridian, at a memorial meeting from which I am permitted to make a few extracts:

"In the company of men whom he liked, there was an 'abandon' in his manner and conversation which was very captivating. He would then tell you every thought he had,—every motive that actuated him. He would even explain his 'tricks' of oratory. I remember his account of his encounter with Senator Conkling. It ran thus:

"Well, you know, early in the session Mr. Conkling had insulted a certain Southern senator in some remarks in the Senate. Some of that Senator's friends got together, -myself among the number, -and conferred about the matter with the view to advising our friend what to do in the premises. The matter had become somewhat cold by lapse of time. We agreed that anything in the way of a challenge or looking to a duel was out of the question. We felt that such a course would place us in an attitude which would weaken our section; we knew that such a course would raise a howl from the people of the North that would cause renewed prejudice towards the people of the South. After a long conference we arrived at the conclusion that nothing could be done but bide a time when our friend could hope to strike back in debate. I felt so much aggravated that I determined that I would myself prepare some good "sticks" for Brother Conkling and "lay for him"; so I spent some thought and prepared some ammunition,some good stout "sticks" for him, and laid them away ready for use. It seemed to me as if I should never get a chance to use my "stick"; but finally, after long months, my opportunity came.

"'The session was nearly over. One day, Mr. Conkling, being in a bad humor, was strutting about the Senate, jumping on everybody, Republican or Democrat; snarling and snapping and making himself generally odious. Let me turn aside' (said Mr. Lamar) 'to say that Conkling is a formidable man. He is a man of great poise and power; no man wanted to encounter him; the fact is that everybody was

afraid of him. Well, that day he finally "rounded up" his "muck running" by charging a number of us who had made a certain agreement with bad faith. Then I saw my time was come. I jumped on him with all my strength, and denounced him; it was not my plan to bring out my cold sticks at that stage. My onslaught was so unexpected that I had him at a disadvantage; he realized this instantly and fully. and instead of coming back at me with that perfect poise and incisive manner, he was "rattled": he lost his head and howled like a wounded animal, (sic.,) When he resumed his seat just in front of, and across the aisle from me. I rose, ready with my "cold sticks." Now, no man who had not been one of our little band there can appreciate the anxiety on the part of that band in a moment like that. There was a terrible tension, breathless silence. Some of my friends were uneasy: they knew that I was an impulsive man; they knew that I had struck a United States Marshal over the head with a chalr in a court-room. and they feared I would assault Coukling or do something indiscreet. Old Vance' (so he spoke of the senator from North Carolina) 'came down the aisle and stood by me, ready to stop any foolish thing I might start to do. Ah,' said Lamar, 'they did not know that I had any "cold sticks." After a preliminary remark in which I said I did not wonder that the senator recoiled at my words, I brought out one of my "cold sticks." Now, I hadn't thought so much of that particular stick: I had others I considered far superior to it. But when towering over him and glaring at him, I said with all my energy, "They were words. Mr. President, which no good man would deserve and no brave man would bear," the whole house came down with applause; the galleries joined, and Old Vance clapped his fat hands. I saw instantly that was the place to stop, and with a great effort I resisted the temptation to bring out any more "sticks" and sat down.

"To appreciate the recital it must have been heard; it cannot be written or repeated so as to give any correct idea of its graphic interest. How few men could so control themselves as to resist such a temptation.

"Once when I had declined to speak after him on the husting (stating that I was not prepared), Mr. Lamar said to me: 'You were wise not to attempt to speak. You are a young fellow just starting out; let me give you a piece of advice: never attempt to speak when you are not prepared.'

"I thanked him for his advice and asked him, 'Do you mean to intimate that you never speak without preparation, and do you mean by being prepared that you write your speeches?' 'No,' he said, 'I try not to speak unless I am prepared. I don't write my speeches; my practice is, when preparing a speech, after having determined what subjects to discuss, to frame my sentences in my mind; to turn each sentence over and over until I get it in shape to suit me, and then to repeat it to myself until it is thoroughly impressed on my mind, and then to go on to the next sentence; so that when I am through with my preparation, I not only know what I am going to say, but the very

gesture that will accompany every word of it. You will find it difficult at first to do that, but you can soon train yourself to it.'

"His own statement was quite sufficient, but it was corroborated by the fact that in that campaign he made the very same speech a great number of times—, verbatim et literatim et punctuatim."

In 1877 Lamar took his seat in the United States Senate. In the Senate he had an opportunity to display his sense of the duty of a representative not to be bound by the instructions of his constituents (upon an issue not involved in his election), when these were contrary to his own judgment and conscience. On the Silver Bill he said:

"Mr. President: Having already expressed my deliberate opinions at some length upon this very important measure now under consideration, I shall not trespass upon the attention of the Senate further. I have, however, one other duty to perform,—a very painful one, I admit, but one which is none the less clear. I hold in my hand certain resolutions of the legislature of Mississippi, which I ask to have read." (Mr. Lamar then sent to the clerk's desk, and had read the resolutions of the Mississippi legislature, instructing their senators to vote for the Silver Bill.) Mr. Lamar, continuing, said: "Mr. President, between these resolutions and my convictions there is a great gulf. I cannot pass it. Of my love to the State of Mississippi I will not speak; my life alone can tell of that: my gratitude for the honor her people have done me no words can express. I am best proving it by doing to-day what I think their true instincts and their characters require me to do. During my life in that State it has been my privilege to assist the education of more than one generation of her youth; to have given impulse to wave after wave of the young manhood that has passed into the troubled sea of the social and political life; upon them I have always endeavored to impress the belief that truth was better than falsehood, honesty than policy, courage better than cowardice.

"To-day my lessons confront me. To-day I must be true or false, honest or cunning, faithful or unfaithful to my people, even in this hour of their legislative displeasure and disapprobation. I cannot vote as these resolutions direct. I cannot and will not shirk the responsibility which my position imposes. My duty, as I see it, I will do, and I will vote against this bill. When that is done, my responsibility is ended. My reasons for my vote shall be given to my people; then it will be for them to determine if adherence to my honest convictions has disqualified me from representing them. Whether a difference of opinion upon a difficult and complicated subject, to which I have given patient, long-continued, conscientious study, to which I have brought entire honesty and singleness of purpose, and upon which I have spent whatever ability God has given me, is now to separate us,—whether this differ-

ence is to override that complete union of thought, sympathy, and hope which on all other, and, as I believe, even more important subjects bind us together. Before them I must stand or fall; but be their present decision what it may, I know that the time is not for distant when they will recognize my action to-day as wise and just; and armed with honest convictions of my duty, I shall calmly await the results, believing in the utterance of a great American who never trusted his countrymen in valn,—that truth is omnipotent, and public justice certain."

His confidence was not unwarranted. He was re-elected to the Senate in 1882. Lamar had something of Lincoln's faith in the people, especially when he knew he would have opportunity to "state his case" before them.

Judge Emory Speer says:

"On one occasion he told me that a young kinsman wrote to him, asking him to see what he could do about a certain political contest in which he was engaged, and in which the machine was being used against him. He wrote his young friend that he had never had any experience in machine politics, but that whenever there was a conspiracy against him, all he could do was to go there and make a speech and break it up."

On March 5, 1885, Lamar was made Secretary of the Interior in the cabinet of President Cleveland. There was some partisan criticism of the appointment, based on the alleged incongruity of having an ex-Confederate officer at the head of the pension office. These critics must have been surprised at the following language in his first report:

"I know of no burden of government that is more cheerfully borne than that of the pension system. I concur fully in all efforts to demonstrate that it is universally regarded as a noble beneficence, and in the view that when well and cleanly administered, it is noble in its purpose and good in its results, diffusing with liberal and just hand the wealth of a wealthy people among those who suffer from the strokes of war and have become impoverished by its misfortunes."

In subsequent reports he called the attention of Congress to worthy classes of cases for which existing laws failed to provide, and urged that the omissions be cured.

Mr. Fewell says:

"Lamar was very much out of place when Secretary of Interior Department. He was a poor business man; he abhorred drudgery; detail bored him. The duties of that department required business talent and



. Q. C. DAMAR.

experience; they consist almost wholly of detail. I knew that he felt himself unsuited to the place. I have reason to believe that he longed to get out of it, and that he desired and accepted the Supreme Court judgeship, not so much as a place suited to his tastes, but as a refuge from the crushing 'grind' of the Interior Department. I recall my last interview with him. He was seated in his official chair in the Department on Interior, before a desk filled with papers. He shook me by the hand, and looked at me as if asking himself, 'Does this man want office too?' I asked about his health, and as quickly as I could do so with ease stated that I had not come to see him about any office: that I had a matter of business pertaining to the land office, and I requested a letter of introduction to Commissioner Sparks. He readily complied with my request,—dictating the letter to his stenographer. That done, he turned to me and we indulged in a brief chat. He read an opinion he had just given in some land matter. I hardly understood the purport of the opinion. I was so pained to observe how worn and weary he looked; his face was haggard, his eyes were lusterless. I asked myself, 'Have they crushed the ambition out of this man entirely? Is he worn out and done for? Let me see if I can rouse him. Colonel Lamar,' I said, 'this is no place for you; 'you will wear yourself out at this drudgery. I will tell you where you ought to be, and where our people need you and need you badly.'

"'Where?' he asked, exhibiting some interest.

"'In the House,' I answered; there is your place, there is where you ought to be,—to lead. We have no leader in that body, and things are going to the "bow-wows" there.'

"Instantly he was the Lamar of old. His eyes blazed; his countenance cast off its almost perpetual shadow; he rose to his feet and glared about him with the manner of a prisoner who was called to break his bonds. He swept his arms through the air, and said with great but suppressed animation, 'You are right, by—! There is where I would like to be. If I were there, I would mash some of those——fellows. I'd teach them some sense.' Then he recalled himself, and resumed his seat and his tired look. The light faded from his eyes, his frame became limp; a clerk came in with my letter; Lamar signed it. 'Good-by,' I said. 'Good-by,' he responded. We shook hands. I never saw him again.

"I did not fully understand his reference to 'those fellows,' but I inferred that he meant the Democratic members. It was common talk, at that time, that the Democratic House, having no leader, was drifting about like dead wood in an eddy."

While it is doubtless true that Lamar was not fond of office detail, yet he filled conscientiously and ably all the requirements of his position as Secretary. His reports are equal to any State papers that have emanated from that department. He was a

warm friend of the Indian, and earnestly desired to terminate the "Century of Dishonor." He declared that "the only alternative now presented to the American Indian race is speedy entrance into the pale of American civilization, or absolute extinction. . . . After incorporating into our body politic four millions of blacks in a state of slavery, and investing them with citizenship and suffrage, we need not strain at the gnat of two hundred and sixty thousand Indians."

Upon his appointment to the Supreme Court by President Cleveland, Lamar took his seat January 18, 1888. Mr. Carson. in his "History of the Supreme Court," says: "One of his colleagues, upon being asked whether he had met the expectations of his friends, replied: 'Fully, Mr. Cleveland made no mistake in appointing him. Whatever doubts existed as to his fitness for the Supreme Bench, growing out of his long political and parliamentary career and absence from the active practice of his profession, have wholly disappeared." It is surprising that any doubt should have been predicated upon the first mentioned. To cite only the Chief Justices as instances, Jay had been Secretary of Foreign Affairs; Ellsworth had been Senator; Marshall, Taney, and Chase had all been members of the Cabinet. analysis of the history of the fifty-four judges who have occupied the bench, with regard to the manner in which they acquired the eminence that led to their appointment, shows that eighteen acquired their distinction in politics, twenty-two on the bench, while only fourteen can be credited to the bar. Since the passage of the act establishing Circuit Courts of Appeal,—leaving to the Supreme Court almost exclusively Federal and constitutional questions,—the value to a judge upon that bench of previous experience in the practical administration of the government will be even greater than it has been heretofore.

But while his political cureer was no disqualification—rather the reverse—the fact that Lamar had never had any extensive practice, and doubtless very little in the Federal courts, caused the apprehension among his friends that he would be at a disadvantage in association with judges before whom cases are

argued on the assumption that the law is already known and its application only is in question. Those who knew his conscientiousness, his capacity for labor, his great intellectual power. never once feared that his decisions would fall below the standard of that great court: but they did fear for him that he would find his work on the bench excessively laborious. Such was the Justice Lamar had none of the false pride that would have prompted a concealment of it. One of his colleagues alludes to it in a note expressing his admiration of the opinion in Pennover vs. Connaughy, 140 U.S. 1: "Your differentiation of cases where a State may and may not be sued is the best I have seen. The case seemed to me a difficult one, and I should not have suspected that you did not enjoy writing opinions. This is excellent." In a conversation with the writer he remarked: "Writing out a decision costs me two or three times the labor it costs a facile worker. Now, there's Judge Blatchford: he can take a record, master it, and" (with a quick gesture) "there is the whole thing—the decision—produced, in the time that it takes me to determine how I shall set about approaching the case." Chief Justice Fuller, to whom this remark was repeated, said, "His decisions, if written with difficulty, do not show any traces of it." While no case which came before him (except, perhaps, that of Neagle) called for the "amplest exploitation of his powers," yet it may be confidently said that his opinions, numbering precisely one hundred, from 125 U.S. to 145 U.S. inclusive, are worthy of the great court of whose records they form a part.

Another case that came before Justice Lamar was that of Anderson vs. Miller, 129 U. S. 71, in which the question was infringement of a patent on "re-enforced drawers." This was the case in which John S. Wise so successfully waged war against the gravity of the court. The patentee was a male citizen of Virginia. The defence was want of novelty. Brandishing a sample of the bifurcated garments before the court, Mr. Wise argued that it was a great reflection on the famous wives and mothers of the grand old Commonwealth for any man to pretend that he had invented an improvement on drawers that was not

already known to these good matrons. It is said that, for the first time in its history, the whole court was convulsed; but it is to be regretted that no trace of the fun of the argument appears in the decision.

Most of Justice Lamar's decisions are in cases involving surveys and boundaries of land, land grants, etc., indicating that his experience in the Department of the Interior had given him a familiarity with these questions which led his associates, perhaps, to defer to him on these subjects.

In one case where the question was whether a negotiable instrument, signed by an officer of a corporation, imported a corporate liability or an individual contract of the signer, he speaks of the "vast conflict—we had almost said anarchy—of the authorities bearing on the question under consideration." (128 U. S.)

In Allen vs. Gillette, 127 U. S. 596—purchase by trustee of trust property at sale brought about by third party—he finds occasion to declare: "The language employed by the textwriters does not present a thorough and perfect generalization of the essential principles pervading the decisions on this subject."

Excellent samples of this judicial work are found in the following cases: Kidd vs. Pearson, 128 U.S., holding constitutional the statute of Lowa providing that intoxicating liquors may be manufactured and sold within the State, for certain purposes and no other; McCall vs. California, 136 U.S. 104, holding that an agency of a line of railroad between Chicago and New York, established in San Francisco, for the purposes of inducing passengers going from San Francisco to take the line at Chicago, but not engaged in selling tickets for the route, or receiving or paying out money on account of it, is an agency engaged in interstate commerce; Howard vs. Stillwell & Bierce M'f'g Co., 139 U. S. 199, deciding when profits which would arise from the performance of a contract may be recovered as damages for the breach thereof; McLish vs. Roff, 141 U.S. 661, to the effect that a writ of error will not lie to the Supreme Court on a question of jurisdiction, under the act establishing Circuit Courts of Appeal, until final judgment in the Circuit Court. The work of his predecessors in the great court which is the glory of the Constitution, he happily characterized as a "century of wise and patriotic analysis." (135 U. S. 82.)

Of his dissenting opinion in the Neagle case, Mr. Carson well says:

"The logical power of Mr. Justice Lamar, his striking talents as a rhetorician, his clearness of vision on detecting the true point in controversy, and his tenacious grasp upon it through all the involutions of argument, his familiarity with adjudged cases, his well-defined conception of the nature of the general government and the distribution of its powers under the Constitution, are best displayed in his dissenting opinion on Re Neagle, in which, unswayed by horror or resentment at the atrocious attempt to assassinate Mr. Justice Field, he insisted that before jurisdiction of the crime of murder could be withdrawn from the tribunals of the State where the act was perpetrated, into the Federal courts, it was necessary to show some law, some statute, some act of Congress, which could be pleaded as an authoritative justification for the prisoner's act, and that no implied power existed in the President, or one of his subordinates, to substitute an order or direction of his own, no matter how lofty the motive or commendable the result."

Harvard conferred upon him the degree of LL.D. in 1886. President Eliot saluted him on that occasion as follows: "Lawyer, Scholar, Senator, Administrator, Teacher."

The romance of his early life proved the happiness of his later years. His first attachment was for Miss Henrietta Dean, of Macon, who did not look with disfavor on his suit; but parental objections intervened. Lamar's first wife was a daughter of Augustus B. Longstreet, author of the inimitable "Georgia Scenes." Miss Dean married General William S. Holt. Lamar lost his wife during his term in Congress. Mrs. Holt had been a widow for many years, when in 1886 Lamar met her again, and they were married January 5, 1887.

In December, 1892, failing health compelled Lamar to give up work. He came to Macon with his wife, and seemed to be making improvement. But "the feet of the avenging gods are shod with wool." On the night of January 23, 1893, he was suddenly attacked with illness, and died within an hour.

His obsequies at Macon, on January 28, were attended by

Chief Justice Fuller and Mrs. Fuller, and by Mr. Justice Blatchford, Mr. Justice Brown, and Mr. Justice Brewer, also by the Clerk and Marshal of the court.

Thus far this sketch has dealt with the external facts of Lamar's career. But character is more than achievement. and to know are greater things than to get and to have. What of his spirit, of the inner life? "As a man thinketh in his heart... so is he." Lamar was warm-hearted, impulsive, tender, generous, sympathetic, good. He was especially considerate of young men: literally eager to help them forward by kindly and encouraging words. If one did anything worthy of praise, hewould take great pains to contrive some indirect method by which he might make known his appreciation. His courteous and patient dealing even with those who made preposterous claims upon his good offices showed the thorough kindness of his nature, while at the same time his candor-"the sweet fresh air of our moral life "-prevented him from permitting the applicant to entertain the hope of having his support when he was not free to give it. His purity of life, purpose, and conduct was never questioned; not even did slander cast any temporary film upon his reputation. Conscience was his guide. He was a patriot. It was a peculiarity that for many years he wore in an insidevest-pocket a small copy of the Constitution. This was buried with bim.

The influences surrounding Lamar in early life were deeply religious. His training at home and at college was distinctly evangelical. Almost all his public utterances show in their religious cast the impress of this training. Robert Browning intimates in one of his poems that in this age we have our choice to live "the life of doubt diversified by faith," or "life of faith diversified by doubt." Another poet, equally reverent, declares:

"Doubts to the world's child heart unknown Question us now from star and stone; The letters of the sacred book Glimmer and swim beneath our look."

Lamar had many vacillations-perhaps once a total lapse-

from the early faith which he "drank in with his mother's milk"; but in his later life it came back to him with sustaining power.

The imperishability of non-sentient life he expressed in a verse which is perhaps his best contribution to the judicial anthology:

"They are not ours,
The fleeting flowers,
But lights of God
That through the sod
Flash upward from the world beneath;
That region peopled wide with death;

And tell us in each subtle hue That life renewed is passing through Our world again to seek the skies, Its native realm of Paradise."

There is an immortality in the influence even of those who "live faithfully hidden lives, and rest in unvisited tombs"; much more in the influence of those who by great personality set in motion those "echoes that roll from soul to soul, and grow forever and forever." We may apply the noble words of William Watson to the forceful and kindly spirit that has left us:

"And now from our vain plaudits greatly fled,
He with diviner silence dwells instead.
Unto no earthly seas with transient roar,
Unto no earthly airs he sets his sail,
But far beyond our vision and our hail
Is heard forever, and is seen no more."

# B

## SKETCH OF HON, JOHN S. DAVIDSON.

#### BY J. F. DELACY.

"To live in the hearts he left behind is not to die."

On the 11th day of March, 1894, the spirit of our beloved friend took flight from its earthly tabernacle to its celestial home above.

The suddenness of the summons, and the flashing of the intelligence over the electric wires caused a shock of poignant grief through the hearts of a host of friends.

Colonel Davidson attended school in Augusta, and afterwards continued his studies at the Auburn Institute, in Jefferson county, Ga. At this latter place he was a student when the war began. After the close of the war he joined James R. Randall in the editorial management of the Augusta Constitutionalist, whose pages he brightened by the fluency and brilliancy of his writings.

In 1866 he began the study of law in the office of Hon. Geo. T. Barnes; later he studied with Henry W. Hilliard. Before he was twenty-one years of age he was admitted to the bar and began his career as a tireless and painstaking attorney, with an extensive and accurate knowledge of the law and as a brilliant and fearless advocate, whose words carried truth and conviction to the minds of his hearers.

In 1873 he formed a partnership with his brother, Wm. T. Davidson, and the law firm of J. S. and W. T. Davidson became known as one of the ablest of the Augusta bar.

As a lawyer, as a public man and as a citizen Colonel Davidson has left a spotless record, and one that will stamp him forever as one of nature's noblemen. He was indefatigable and skillful in the preparation of his cases; earnest, able and eloquent in their forensic conduct. Always true to himself and to the interest of his clients, and true to the profession to which he belonged.

Colonel Davidson was a member of the State Senate, 1883-84,

as a representative of the Eighteenth District. He was chosen President pro tem. of that body. He was Chairman of the Finance Committee, and while he occupied that position the committee never lost a report. He was returned to the State Senate, and was chosen President of that body for the session of 1886-87. His presidency was characterized by dignity and fairness, and wen for him great popularity over the State.

His capacity as a fluent, brilliant and profound orator was recoganized everywhere; his arguments were convincing, and were always stated in a clear, logical manner. His words were well chosen, and contained the choicest imagery from a vivid imagination, and apposite illustration from a well stored memory.

For over a year his health had been failing. He was afflicted with an affection of the heart and kidneys that gave him and his friends grave apprehensions for his life. He visited New York and Baltimore for medical advice. Being advised that rest and freedom from the arduous duties of his practice were necessary, he returned to his home.

He was upon the streets of the city, and dined at the home of his brother, Mr. Wm. T. Davidson, on the afternoon before his sudden death.

In relation to popular education he was most endeared to the people of Augusta. While still a young man in public speeches and written articles he advocated the establishment of public schools. His devotion to the interest of the schools made him willing to undergo any sacrifice of time and means. His wisdom and care, and the unsparing industry with which he studied the problems of school work, have been the means of rendering the public schools firmly grounded in the confidence of the people.

In all the numerous positions of trust and responsibilities which Colonel Davidson occupied in his life, he never failed to distinguish himself and to honor the position. He was a Richard Cœur de Lion at the bar, an Ivanhoe before the people, and a Chevalier Bayard in the Senate.

When such a man dies in the vigor of his manhood well may

we all stand still and exclaim with the Psalmist, "Behold, thou hast made my days as a hand breadth, and mine age is as nothing before thee; verily, verily, every man at his best estate is altogether vanity."

Colonel Davidson was a man who loved his friends with an indescribable tenderness and strength of feeling, and would have sacrificed almost anything upon the altar of friendship. He was high-toned, with a manly feeling, and had reverent love of personal liberty. He was one of the most kind-hearted of men. He was pre-eminently patriotic, and always thought of his native home as the dearest and sweetest spot on earth. He was powerful in opposition, resolute and courageous, and was spirited and efficient as an opponent. Implanted in his breast were a high sense of honor and a deep regard for character.

Scrupulously exact in all matters of right, he was moved by heartfelt devotion and sincere love for things divine. Nature gave him an astonishing command of words and eloquence of expression. Endowed with a deep, strong, original and comprehensive mind, with powerful reasoning faculties, he was readily recognized as a man of great intellect.

In private life he was always a welcome guest. His conversation sparkled with wit that never left a sting. His gentleness and wisdom made him an admired citizen. There was no position that he did not adorn. He filled many places of honor and trust.

It is not the language of exaggerated eulogy to say that it will be difficult to find a man to fill the place made vacant by his sad and untimely death. He was a close student. He devoted himself to law and literature. He had a fine presence and was endowed with striking talents. His mind was retentive, and his gift of language unfailing. He was an advocate and an orator. His manly bearing, full-rounded voice, glowing imagery, graceful diction, and charming humor made him at all times a popular and effective speaker.

As an orator Colonel Davidson was peculiarly gifted, his

language unusually chaste and elegant, as well as easy and fluent; his elecution correct and impressive; his logic clear and concise, and his voice musical and magnetic. Few who have heard him can forget the charm of his manner, or the force and perspicuity of his matter, and if he failed to take the foremost rank in debate, of which he was a conspicuous ornament, it was solely because of a characteristic modesty which made him shrink from anything bearing the semblance of offensive obtrusiveness or self-assertion.

"A sweeter, a lovelier gentleman, Framed in the prodigality of nature, The spacious world cannot again afford."

All the meshes which have been woven around his daily life to bind him earthward are sundered, but only sundered, to be rewoven, we hope, in the better country where "the silver cord is never loosed, nor the golden bowl ever broken."

And so, while we mourn our loss, there comes back to us from the grave lately strewn with love's flowers, bedecked with love's garlands and watered with love's tears, a sweet remembrance of his brilliant intellect, his sturdy character, his genial nature, his generous bearing and his manly life. We will honor his virtues and chisel deep his memory upon the tablets of our hearts.

"The deeds he has done are left behind,
The enduring product of immortal mind;
Fruits of a genial morn and glorious noon;
A deathless part of him who died too soon."

If a stranger from a foreign land had chanced to be present and witnessed the imposing funeral pageant and the universal outpouring of the people to do honor to their noble and distinguished dead, he would have seen how the hearts of the bravest and strongest were paralyzed by the heaviness and suddenness of the blow. How an entire community, without regard to age, sex, color, or condition, was bowed down in grief and sorrow and bitterness of woe. If he could have stood at the grave, strewn as it was with beautiful and fragrant flowers, and had seen how many in that vast throng were unable to repress the tears that

welled up from the heart, he would have felt constrained to exclaim: "Behold, how they love him."

What higher or nobler tribute could have been paid to the dead than was implied in such a demonstration from the people who had known him long and well?

It was far more significant and eloquent than words. He had been reared in their midst, and they had known him from his earliest childhood. They had witnessed the commencement of his professional career, and watched with admiration and pleasure his onward and upward course, as, step by step, he climbed the steep "where fame's proud temple shines afar." They had seen how, in a few years, by his commanding abilities and persuasive eloquence, he had attained enviable pre-eminence at the bar whose members enjoyed not only a State but a National renown.

C

SKETCH OF HON, B. P. HOLLIS.

BY J. F. DELACY.

Benjamin P. Hollis was born on the 8th day of January, 1844, in Monroe county, Ga., and died on the 13th day of May, 1893, and at his death had arrived at the age of forty-nine years. When a mere youth, actuated by that chivalric feeling that ever and always influenced him, he volunteered in "Cutts's Battalion of Artillery," with which he remained until the close of the war between the States. In the summer of 1868 he graduated at the University of Georgia with first honor of his class, being at his death a trustee of that honorable institution of learning.

In December, 1868, he was admitted to the bar at Albany, Ga. Locating in Americus, he entered into the practice of law with Judge Allen Fort, under the firm name of Fort & Hollis, continuing the practice in said firm for a number of years, at the dissolution of which he became a member of the firm of Hawkins, Guerry & Hollis, and again after some years formed a partnershp,

with the gallant old hero, General Philip Cook, under the firm name of Cook & Hollis. Then again alone, he threw himself into the practice of law, attaining high distinction, rising to the front rank of the profession. As a lawyer he had few superiors, if any. He was sound as a counselor, able as an advocate, terse, concise and clear; his promptness and perception enabled him to separate the points in issue from all extraneous matter, to disentangle them and fix upon the true question involved in the case. It was a striking quality of the mind of our deceased brother. His logic was so clear that every member of his argument carried the weight and opened the way to all that was to follow. He was so constituted that, however much he felt and achieved in successful trials, exultation over his defeated associates never entered his soul; quietly and calmly he accepted the result,— in defeat the same quietness and calmness.

Although often solicited to enter political life, he held himself aloof from it; it was against his nature or desire, he never desired or offered for office.

He was a strong friend of education, and for many years occupied a prominent position as a member of the Board of Education of the public schools of the city of Americus.

Colonel Hollis was the embodiment of truth; no temptation swerved him from the path of duty.

Language is inadequate to do him justice in his domestic relations. As a husband he was kind and affectionate, as a father he was indulgent, devoted and lovable. He was a "gentleman." Those who know him best love to contemplate him. He never thrust himself forward, nor was he one to seek or ask for recognition; he left it for others to find out his true worth and merit.

His intercourse with the bar was always pleasant and agreeable. No words can fitly portray the moral and religious virtues of Colonel Hollis. The expressive language of holy writ may be applied to him, "Lord, who shall abide in thy tabernacle? Who shall dwell in thy holy hill? He that walketh uprightly, and

worketh righteousness, and speaketh the truth in his heart. He that backbiteth not with his tongue, nor doeth evil to his neighbor, nor taketh up a reproach against his neighbor. He that sweareth to his own hurt and changeth not. He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these things shall never be moved."

 $\mathbf{D}$ 

## SKETCH OF HON, A. PRATT ADAMS.

## BY T M. NORWOOD.

Alexander Pratt Adams was born in Savannah, Ga., February 20, 1852. He received his academic education in the schools of Savannah, and was prepared to enter college by the late William S. Bogart.

He entered the University of Georgia in the Sophomore Class in September, 1866; in the class of which three other distinguished Georgians, Judge Emory Speer, William R. Hammond and Howard Van Epps, were members.

In the fall of 1869 he commenced the study of the law in the office of the distinguishd jurist, Thomas E. Lloyd, and was admitted to the bar of the Superior Court of Chatham county on February 26, 1870, and opened an office immediately in Savannah. In the year 1876 he and his brother, Samuel B. Adams, formed a partnership for the practice of law, which continued till the year 1882, when, on the resignation by Judge Tompkins of the judgeship of the Eastern Circuit, Mr. Adams was elected, and on November 10 qualified to fill the unexpired term. He was re-elected to that office and held it until he resigned on May 1, 1889, when he at once became a member of the law firm of Denmark & Adams of this city, and so remained until his death on September 25, 1892.

This brief sketch epitomizes the short career of our distinguished and lamented brother. Two decades ushered him upon his active life, and two more decades brought that life of action,

usefulness, honor and renown to its close. It may be safely asserted that his achievements lay within the limits of the last twelve years of his brief career. He was not a youth of special note and rank in the community. At graduation he was not marked by classmates and professors as one of those great scholars who will attain any high rank in church or state, but who, in the large majority of instances, reach the pinnacle of their fame on commencement day.

That this was not due to lack of mental power his subsequent course has demonstrated. He was, no doubt, one of the many young men who, during their college course, are looking over and beyond the curriculum and campus into the broader fields of action and knowledge, where first honors are not the rewards of memory and rote and ribbon parchment. Speaking in a dead language is never received as proof of intellect or manhood. His brilliant career as lawyer and judge assures us that, when a collegian, he had chosen his field of future conflict, and was then forging weapons fit for victory.

Passing over the short period during which Mr. Adams practiced law before his elevation to the bench, we will briefly comment upon him as a judge. Considering his age (being but thirty years old when he assumed the ermine), we can say—with the assurance, we believe, of all who practiced law in this court—that no one of his predecessors was his superior as a judge. He combined quickness of apprehension with breadth of comprehension; severity of logic with strong and helpful imagination; clearness of perception with accuracy of expression; a full vocabulary with verbal eelecticism; patience with dignity, and urbanity with discipline. Ruling in perfect mastery over all these powers and aids was a noble sense of justice, tempered by mercy and directed by judicial wisdom.

If we were to name any one characteristic as the chief one of all the mental and moral powers of Judge Adams, we would call it earnestness. It was the flame to his oratory, and by it he conquered. It was visible in all his actions and audible in every utterance, whether in his most impassioned eloquence, or the gentle flow of social conversation.

With this quality of soul, with a round, melodious voice, a mastery of language strong and appropriate, a bold yet chastened imagination, a strength of logic which gave to a simple statement of a proposition the force of a demonstration, he ranked among the foremost orators, whether on the hustings, or in the forum as an advocate. Even his charges to the grand and petit juries were often eloquent, and always models of diction.

But so far we have only looked upon the moral and intellectual man. There was another and a higher and sweeter life, to which we direct attention, else the performance of the duty assigned to us would be sadly incomplete.

Judge Adams died at the age of forty years. He had about reached the crest of the hill. In his upward course he had gathered honors, reaped rich rewards, listened to the plaudits of those below, so sweet to young ambition; he had soared his head above the clouds where vaulting youth fondly dreams eternal sunshine settles to remain.

Having reached the contemplative period in life, he looked down and backward, and then down and forward, and he realized that, as he advanced beyond the crest, his worldly honors could be no prop to his feet, his intellectual lamp no light to his safety. Conscious of his weakness and dependence, he asked for divine About a year before he became a member of the Independent Presbyterian Church of this city, he led to the altar Miss Sarah Olmstead of Savannah. And we think it not out of place to say we doubt not but that this judicious step changed the current of a moral into a devotedly active Christian life. nestness of soul which we believe was his strong characteristic, kindled into a brighter flame in the Christian, and illuminated every step he took until his mortal became immortal. who knew him best after his spiritual change unanimously bear witness to his absolute submission to the divine will, and his abiding faith that death is but the usher to immortal life.

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## SKETCH OF HON, JOHN PEARODY.

BY L. C. LEVY.

This distinguished lawyer and golden-hearted gentleman was born on the 20th day of October, 1830, in Washington county, Ga., and was the second son of John and Elizabeth Peabody. They removed to the city of Columbus in the year 1834, where the education of the subject of this memorial was begun, to be finished with credit to himself and pride to his Alma Mater, at Emory College, Oxford, Ga. Pursuing the study of law under the direction of the late Major Raphael J. Moses, in 1853 he was admitted to the bar in the city of Columbus, and as the associate of Major Moses entered immediately upon the active practice of his profession.

In 1860 he was elected solicitor-general of the Chattahoochee Circuit, which office he held until 1867, discharging its duties with zeal, ability, and devotion to the interests of the State, and yet with a sense of justice, fairness, and generosity, which was not less a tribute to his own manliness and humanity than an honor to the great Commonwealth which he represented, and which commanded alike the encomiums of the people and the bar.

In 1863 he formed a law partnership with William H. Brannon, which connection was severed only at his death-bed, after professional and personal relations of such absolute confidence, mutual esteem, and respect, as to suggest the tenderness of fraternal affection, rather than a mere business association.

In 1873-74 Mr. Peabody represented Muscogee county in the General Assembly of Georgia, serving with eminent ability as a member of the Judiciary Committee in the House of Representatives, procuring the passage of important local bills for his constituents, and of that beneficent public law prohibiting the issuance of bonds by cities and counties, except after sanction by two-thirds of the qualified voters; the substance of

which law was afterwards incorporated in our State Constitution of 1877.

He was an ardent advocate and promoter of free school education, and of the establishment of public schools in the city of Columbus for its white and colored population. Mr. Peabody also filled successively and for many years the offices of treasurer and member of the Board of Commissioners of Commons for the city of Columbus, president of the Columbus and Rome Railroad, counsel for the Central Railroad and Banking Company of Georgia, and for the Eagle and Phenix Manufacturing Company of Columbus; to each and all of which several corporations he rendered arduous and invaluable service.

In 1892 Mr. Peabody was elected to the presidency of this Association, and performed the duties of that office in a manner at once so felicitous and tactful, as to enhance alike the pleasure and usefulness of its purposes.

As a leading elder and earnest worker for many years in the First Presbyterian Church of Columbus, the unaffected simplicity and consistency of his religious life endeared him to its entire membership, and his death was to them an inconsolable bereavement.

A few years before the death of Mr. Peabody, the names of Judge J. H. Martin and Samuel B. Hatcher were added to the old firm, and as the senior member of the firm of Peabody, Brannon, Hatcher & Martin, he continued active and indefatigable in the discharge of his professional duties, even to the end.

The estimate in which Mr. Peabody was held by his legal associates is well indicated by those who knew him best, and we adopt for its expression the following language of the Columbus bar at their memorial services held in honor of his memory: "His industry in preparation left no unprotected place to his antagonist. His discriminating legal judgment enabled him to discern, and his legal panoply fitted him for attacks upon the weak points of his opponent. His highest praise in this regard is the fact that in a practice covering more than forty years, there

was never a breath of suspicion as to his fidelity to his clients, nor as to the cleanness of his methods in dealing with all who were arrayed against him at the bar."

The deportment of Mr. Peabody in the constant attrition attendant upon forensic contests, was an example of conservative, calm equipoise and unaffected dignity, a practical illustration of the highest professional ethics which graced the profession he adorned, and ennobled its practice by gentle courtesies.

On October 10, 1854, he was united in marriage to Miss Josephine L. Chaffin, who, together with nine children, survives him, to mourn the irreparable loss of one whose unsullied and devoted life as lawyer, legislator and public-spirited citizen was sublimated by the perfect peace and loyal purity of a domestic felicity which bound him by ties of tenderness beyond expression to that inner circle of loved ones, upon the sanctity of whose supreme and sacred sorrow it is not our privilege to intrude.

#### F

#### SKETCH OF HON, JAMES T. NISBET.

#### BY THE COMMITTEE.

James Taylor Nisbet, second child and second son of Eugenius A. and Amanda Battle Nisbet, was born February 20, 1828, in Madison, Ga., and died at Wingfield, Bibb county, Ga., April 29, 1894. He moved to Macon, Ga., with his father in January, 1837, and attended Vineville Academy, but was principally educated by Heman Meade, who laid the foundation for that ripe maturity of classical and literary culture which enriched his thought and pervaded all the productions of his mature life.

Entering the Junior Class of Oglethorpe University at fourteen years of age, his devotion to study crowned him at the age of sixteen with the first honor in his class. Immediately after his graduation, he took a course in law and medicine at Yale, and was admitted to the bar, by special act of the legislature, when only seventeen years of age.

He devoted himself assiduously to the duties of his profession, practicing with Judge Augustus Reese, of Madison, Ga., until 1850.

He then returned to Macon and assumed the duties and responsibilities of editor and joint proprietor of the *Journal and Messenger*, the firm name being S. Rose & Co. In this position he remained for five years wielding a trenchant and scholarly pen.

On December 18, 1856, he married that cultured and refined woman, Miss Mary S. Wingfield, of Eatonton, Ga., who survives him, and whose social and domestic graces adorned and blessed his home.

In 1860 he resumed the practice of law, but in a short while he responded to his country's call and entered active service with the Jackson Artillery. Subsequent to this he was appointed receiver of sequestered property on the part of the Confederate government.

At the close of the war he again returned to the practice of law, in partnership with his distinguished father, Eugenius A. Nisbet, and his uncle, J. A. Nisbet, under the firm name of Nisbets. During this time he was made presiding justice of the inferior court, and held this position until these courts were abolished by the Constitution of 1868.

He continued in the practice of his profession until, in 1881, failing health compelled him to retire. He moved to his country home, and there had that leisure to devote to the indulgence of those scholarly pursuits which he so much enjoyed and which a busy life so frequently prevents.

He was broad, liberal and philanthropic. He drew the act incorporating the Board of Public Education and Orphanages for Bibb county, in 1872, and was for nearly twenty-two years an active and useful member and, for a while, President of the Board of Education of Bibb county. In 1887 he was appointed Secretary of the State Executive Department.

He was a member of the Presbyterian Church and continued its devoted adherent throughout his life.

Born in a period which may be truly called the Golden Age of Southern chivalry, he grew up breathing a social atmosphere purified of the ruder elements of primitive life and untainted by malaria of modern commercialism. By heredity he had the instincts of the scholar, and his liberal education fostered those literary tastes and classical proclivities which stamped him in everything the man of culture and brought him into favorable comparison with his distinguished father, whose scholarly attainments were recognized on more than one continent.

Few men knew so well the delicate lights and shadows of our wonderful language, and few men of his day were so happy in the expression of their thought in pure words compacted into strong sentences.

His reading was wide and varied, his information vast and ready, and in every circle he charmed and held by the brilliant play of his conversational powers and the robust vigor of his thought.

Judge Nisbet was a many-sided man and displayed a versatility of talent adapted alike to the diversity of his professional pursuits. Whether at the bar, on the bench, in the sanctum or upon the platform, he was equally at home, and adapted his utterances to the occasion which he served, using at will either the sententious terseness of logic or the polished periods of rhetoric.

But how meagerly these poor words portray the harmonious outlines of this noble life. It speaks for itself, and after the echoes of our praises have died away and the enduring monuments erected by loving hands have grown old, the virtues which illuminated his life and the excellencies which made it prominent will be remembered and commended to the emulation of youth.

In that classic language of which he was so fond and from which he so often quoted with exquisite effect, let it be said of him as an epitome of his character:

"Integer vitae scelerisque purus."

G

#### SKETCH OF HON. RICHARD F. LYON.

#### BY THE COMMITTEE.

Richard Francis Lyon was born in Lincoln county, in this State, on the 9th day of September, 1817, near the "Dark Corner of Lincoln," as he once laughingly said, a locality made celebrated and historic by Judge Longstreet in his "Georgia Scenes." He first saw the light upon his father's farm in the country, was reared in the country, labored in the country in his youth, was familiar with the manners, modes of speech and action of its people, and throughout his long and laborious life, though it was spent in towns and cities, retained a longing for the freedom and independence of the country, and something akin to contempt for the humanity of the city.

His father was named Thomas Lyon, a sturdy, respectable farmer of Lincoln, who, when somewhat advanced in life, encountered pecuniary misfortunes and moved to Dougherty, and posed for many years in Albany as a justice of the peace. is represented as having been a man of very strong natural intellect and full of eccentricities, and his distinguished son is said to have inherited many of his peculiar characteristics from his father. On one occasion, when his peculiarities were discussed by a number of gentlemen in Albany, one of them remarked, "Yes, of course, he is very peculiar; if he was not, he would not be old Tom Lyon's son." His mother was a Lamar, the daughter of Peter Lamar, and through her he was the first cousin of Lafayette Lamar, who lost his life, which was full of promise, in the service of the Confederacy, and of the distinguished minister, Jabez L. M. Curry.

When approaching his majority he left his father's farm, and had the rare good fortune at a somewhat mature age to enjoy at Midway for one year the instruction of the Rev. Carlisle P. Beman, who was not only a great teacher but a wise and good

man. Most of the education which he had was received during this year, and we have heard him speak of Mr. Beman in terms of affection and admiration, rather unusual with him. After leaving Midway he taught school for one year at Franklin's Rest, in Dooly county, where he became attached to and married Miss Ruth Knowles, one of his pupils, who for more than a half century was his devoted wife. She survived but a short time to lament him, having died a few days ago in the Southern part of Florida, where she had resided for several years before the death of her husband.

Judge Lyon practiced at Starksville, Albany and Macon, in all of which places he successively resided, and during his incumbency of the Supreme Court, where he served a term of six years, he resided in Atlanta, and from thence he removed to Macon, where he lived until his lamented death on the — day of ——, 1893.

Judge Lyon was noted for the number of his partners. At Starksville he practiced with John Smith of Macon, T. M. Leonard and E. W. Warren; at Albany with Richard H. Clark and Greenlee Butler; at Macon with W. K. deGraffenried, Shorter, Samuel Irwin, James Jackson, James T. Nisbet, Thos. B. Gresham, Claud Estes, L. L. Knight, and John R. Cooper, who was connected with him at the time of his death. A list which presents a very remarkable variety of talents, characteristics and acquirements.

When Judge Lyon began his professional career at Starksville

he was a rugged, resolute man, impatient and often impetuous in action, impatient, especially of criticism or contradiction, emphatic and even dogmatic in the expression of his opinions, disinclined always to any compromise of his cases. He, convinced that his client had right and justice with him, identified himself with him and his cause, and contested every inch of ground as if every trial was a prize fight. His oratory, whilst it was not eloquent or polished, was always strong, clear and effective before court, or jury, or populace. He was superior as a practitioner. In the rough and tumble of the courthouse he was in his element. Here he was equal, at the outset, with older lawyers, and superior to any young lawyer in Southwestern Georgia. never met his match among the young men until Willis Hawkins A lawyer familiar with both of them says: located at Starksville. "Willis, from the start, just pushed in, whether he knew law or not, and at the beginning knew but little, but acquired until he finally became like Lyon, a first-class practitioner." men were inseparable, when attending courts together, rollicking and frolicking and joking like boys during the recesses, but fighting during the sessions of the body. Each admired the other, and each feared the powers of the other in the courthouse. Having the marked characteristics which we have briefly mentioned, with a love of fun and raillery, laborious in the preparation of his cases, and with an abounding vitality and physical strength which made him capable of any amount of physical or intellectual labor, and with an admirable disposition, when his excessive combativeness was not aroused by criticism and opposition, Judge Lyon was always a marked man and a successful In his career he probably spoiled more legal cap and spilled more ink than any member of the profession who has ever practiced in Georgia.

Judge Lyon, at one period of his life was an active and effective politician, but, belonging to the Whig party, he was unsuccessful in several elections, as his party was largely in the minority. But, when a candidate for Congress he reduced the Democratic majority from three hundred and more to one hundred and five. In 1850 he connected himself with the Southern Rights party, and as a Democrat he was elected judge of the Supreme Court, which office he held for one term, as we have mentioned before. That was the only office, we believe, that he ever held. His associates on the bench were Joseph H. Lumpkin, Linton Stephens and Thomas J. Jenkins. We have only space to add that he exhibited on the bench the same indefatigable industry and attention to his duties that he did at the bar.

There was one of the peculiarities of our deceased brother which it is proper to mention. He was affected less by his environment than any man we ever knew. Neither persons nor places nor occupations nor associations had much influence over him. Nature made him as you knew him, and art added little to her handiwork; like a huge stone, rough from the quarry in the mountains and hardly touched by the chisel of the sculptor.

He seemed always glad to escape from the artifices and conventionalism of city life, and the treadmill of his professional life, into the freer and easier life of the country. When we asked him on one occassion where he would spend his summer vacation, he said: "I don't know but probably Ruth and I will hide ourselves in the woods and locate for the season by the side of some fine stream." He often reminded me of the lines of Horace, in which he satirized the well known disposition among men to find fault with their own occupations and praise those of others. He was, during a long life, busy in the preparation of briefs and examining authorities, and arguing cases in the courthouse, but he envied the employments of the farmer. "Laudet agricolam juris legibus queperitus."

We have said that Judge Lyon was irascible, dogmatic and combative, and if we add to these characteristics that he was a mere child of impulse, speaking and acting on many occasions with very little reflection and often swayed by the passing mood, and in addition that he was exceedingly reticent in the expression of opinion and feelings and sentiment which would indicate his

inner life, it will be readily perceived that he was a very peculiar character, full of contrasts and contradictions and difficult to describe to those who were not intimately acquainted with him.

## H

#### SKETCH OF ROBERT S. LANIER.

#### BY W. DESSAU.

Colonel Lanier was born in September, 1819, at Athens, Ga., and was descended from a long line of gentle ancestors. ceived his literary education in the schools of Georgia, and Randolph Macon College. He left college in 1840 and commenced the study of law in Macon. In 1840 he was married to a sister of Hon. Clifford Anderson. After his marriage he was admitted to the bar and commenced the practice of law with Judge David Clopton. Afterward he formed a partnership with Hon. Clifford Anderson, now a member of this bar, and this partnership continued from 1852 until his death. His first wife having died in 1865, Colonel Lanier, in 1870, was married to Mrs. Anna Morgan, who survives him. He was the father of Sidney and Clifford Lanier and a daughter, Miss Gertrude. She and Sydney died before their father, and his son Clifford is still living.

At the ripe age of seventy-four, Colonel Lanier passed away, having been in the continued and uninterrupted practice of the law at this bar for more than half a century. During all of his long and active professional life, Colonel Lanier never allowed anything to interfere with his devotion to his calling as a lawyer. No desire for office attracted him; no other business for profit or honor ever diminished for a moment his devotion to his professional duties. In the year 1850 he was admitted to the bar of the Supreme Court of the State of Georgia, and from that period down to the time of his death, the name of his firm appears in nearly every volume of the reports, indicating the wide extent of his business as a lawyer.

At the time of his death Colonel Lanier was the oldest member of this bar. He had been so long in active service that nearly all of his associates of former days had passed away, and a new generation had come up who knew him after he had passed his Mr. Clifford Anderson, his partner through so many meridian. years, Judge James T. Nisbet and Mr. R. K. Hines are the only living members of this bar who knew Colonel Lanier in his younger If we may judge his early life by what we saw in his maturer years, we can only regret that we were deprived of the opportunity of a longer acquaintance with such a noble and cultured gentleman. In his relations to his brother lawyers there never was a kinder spirit than that which filled his soul. Gentle, patient, courteous, full of consideration for the shortcomings of others, and particularly gracious to the younger members of the bar, he moved amongst his professional brethren with a feeling of affectionate regard for them all which made him loved and honored by them. No words of harshness, even in the moments of fierce professional conflict, ever passed his lips, and the walls of this court room never echoed a single phrase of unkindness or want of regard for those who opposed him at the Had he been but occasionally in the courts, this might not be remarkable, but his practice was full. In nearly every case of importance he was of counsel, and he met on this floor in almost daily strife every lawyer who had a case, and yet during all these long years of professional activity he so demeaned himself toward his professional brethren that he had no word of censure, no word of blame for his brethren, at the bar. When we reflect that it is so easy, so human, for a lawyer in active practice to become irritated and to express his feelings at times against those who are opposing him, the determination evinced by our departed brother never to speak ill of his brethren at the bar is a great tribute to his memory.

Toward his clients Mr. Lanier exhibited a degree of fidelity and ability that may be taken by us as a shining example to pursue. In defence of his clients' rights he was as brave as a lion, and he allowed nothing to interfere between himself and his clients' interest that would affect them one jot or tittle. He did not, like Lord Broughman, forget there was no person in the world to whom he owed a duty but his clients, but, better than Lord Broughman, he remembered his clients and also the duty he owed to others. As a lawyer, while not aspiring to be a brilliant advocate, he was a most profound and able reasoner, thoroughly versed and grounded in a knowledge of the common law, well prepared with a knowledge of current decisions and in the learning that grows out of them. In the court room and before the jury he was quick to seize upon the strong points in his own case, and equally as alert in detecting the weakness of his adversaries. His manner was mild and gentle, and frequently he carried off the prize of successful litigation before the opposing counsel had fairly realized defeat.

His industry was tireless. Trained in the days of careful pleading, he brought his cases into the court prepared thoroughly on every point and with a complete mastery of every detail. What could not be accomplished in the ordinary hours of his office was completed at his home. Nothing in the way of business was laid aside until it was finished. This persistent habit of methodical industry enabled him to accomplish a vast amount of work with apparently small exertion, and at the same time trained him into the successful lawyer.

In his social intercourse he was a gentleman of the purest and most refined type. While his demeanor was somewhat stately, yet his charity was so catholic that he was never cold or repellant. Well may we take one bright lesson from his life; though he was devoted to his professional duty, which compels every lawyer to take the side of his client, and consequently become aggressive in the interest of his client's rights day in and day out, yet this work, continued for nearly fifty years, never made an inroad upon that social gentleness which was one of his most marked characteristics. At his own home, at the home of others, in casual meetings, in travel, everywhere, he always exhibited

toward those who met him an unbroken and unvaried front of courtesy, gentleness and refinement. Let no man say that devotion to the business of the law will make lawyers harsh or severe. Let us look upon this illustrious example who lived among us so long, and take encouragement from him that no professional duty which we are called upon to discharge should lessen our ability to be gentle, courteous, kind, and gracious in all the affairs of life. Let us hold him up before the eyes of our brethren, before the public and before posterity as a Chevalier Bayard, sans peur et sans reproche. "Time, too, dealt gently with him; the gray hairs showered upon his head were as a benediction and a blessing, and the wrinkles on his brow were but notches in the quiet calendar of a well spent life."

The youngest of us may not look upon his like again. The civilization of his generation is gone. The environments which affected him and which made him the noble gentleman that he was are lost forever to us and to our posterity, but the influence of his example for good is not lost, and will live among us as long as we have the honor and courage to revere an upright citizen and spotless man.

How fast the current of life rolls on, bearing away those with whom we are daily associated, and bringing ever before us new faces and new relations. Standing here to-day amidst this group of lawyers, let us for a moment turn back the stream of time and see how many have gone before, and let us reflect how rapidly we are approaching the bend in the stream where we, too, will be lost to the sight of our comrades. In the fall of 1871, when the writer came to the bar, there were amongst its leaders Judge Lyon, Colonel Whittle, Judge Hall, Mr. Poe, Mr. deGraffenreid, Judge James A. Nisbet, Judge James T. Nisbet, Judge James Jackson, Colonel Lanier, Judge Anderson, Mr. Bacon and others. Within the period of twenty-three years how many have passed away? Of all the members who were at the bar twenty-three years ago there are but five of them here now in active practice. When we reflect how rapidly these changes occur, with what

swift and remorseless hand the grim monster bears us away, how careful we should be that when our time comes to go and the chronicler is to speak of us, he may say, as we do to-day of our departed friend, he never spoke ill of his brother lawyer. There may be forensic triumphs and professional successes which bring honor and emolument, but there is no triumph so great, no emolument so golden as the honor and esteem and the love of those who are associated with us daily in the practice of our profession. Let us learn to value the esteem which each should have for the other of us. Let us learn to know that there is nothing which can outweigh its value if we possess it. Colonel Lanier manifested in all of his long and active life the idea that whatever success he gained, whatever victory he achieved, nothing was dearer to him than the love of his brethren at the bar.

Gone forever is his gentle voice, and gone, too, is that fine presence which marked him, though modest, a prince among men; but there remains among us a sweet, grateful recollection which will not fade from our hearts, but will grow stronger and fresher and more fragrant as it descends, a noble heritage to our posterity.

# T

# SKETCH OF COLONEL CHARLES C. JONES, JR.

## BY THE COMMITTEE.

Born in Savannah, Ga., October 28, 1831, and a son of the Rev. Charles Colcock Jones, D.D., an eminent Presbyterian divine, whose eloquence in the pulpit, ability as ecclesiastical professor, and devotion to the cause of the evangelization and moral elevation of the colored race challenged universal recognition—the subject of this memoir, after a partial course at South Carolina College, Columbia, repaired to Nassau Hall, Princeton, where he graduated with distinction in 1852.

After reading law in Philadelphia for about a year, he matric-

ulated at Dane Law School, Harvard University, Cambridge, Mass., from which institution he received, in 1885, his degree of LL.B. While he was a member of that law school, Joel Parker, Theophilus Parsons, and Edward G. Loring were the professors. Besides taking his regular law course, he attended the lectures of Professor Agassiz, Mr. Longfellow, Dr. Wyman, Professor Lowell, and Dr. Holmes.

Returning home in the winter of 1854, he entered the law office of Ward & Owens, in Savannah, and was called to the bar in that, his native city, on the 24th of May, 1855. In due course he was admitted to plead and practice in the Supreme Court of Georgia, in the Sixth Circuit Court of the United States, in the District Court of the Confederate States, and in the Supreme Court of the United States.

During the second year of his professional life he became the junior partner of Ward, Owens & Jones. When Mr. Ward went abroad as United States minister to China, Mr. Owens retired from the firm, and the Hon. Henry R. Jackson, late United States Minister to Austria, was admitted as a member. The firm continued to be Ward, Jackson & Jones until Judge Jackson took his seat upon the bench as judge of the District Court of the Confederate States of America for the District of Georgia. The business of this firm was large and lucrative.

On the 9th of November, 1858, Colonel Jones married Miss Ruth Berrien Whitehead, of Burke county, Georgia. He was married a second time on the 28th of October, 1863, to Miss Eva Berrien Eve, of Augusta, Ga., a niece of the late Dr. Paul F. Eve, of Nashville, Tenn. Both of these ladies were grand-nieces of the Hon. John McPherson Berrien, Attorney-General of the United States during General Jackson's administration, and afterwards United States Senator from Georgia.

In 1859 Colonel Jones was chosen as alderman of Savannah, and in the following year he was, without solicitation, nominated and elected mayor of that city—a position, writes Governor Stephens, seldom if ever before conferred on one so young

by a corporation possessing so much wealth, population and commercial importance.

During the term of his mayoralty the Confederate revolution was precipitated, and many abnormal questions arose demanding for their solution serious consideration and prompt decision. Colonel Jones was a secessionist, and it is believed that one of the earliest public addresses on the situation, delivered in Savannah, fell from his lips.

Declining a re-election of the mayoralty, he joined the Chatham Artillery,—Captain Claghorn,—of which light battery he was the senior first lieutenant.

During the war between the States, Colonel Jones saw active service as an officer of artillery, doing duty in the capacity of Chief of Artillery for the Military District of Georgia and the Third Military District of South Carolina.

Returning to his native State in the spring of 1877, Colonel Jones established his home at "Montrose," in the village of Summerville, near Augusta, Ga., where he continued to reside up to the day of his much lamented death, which occurred on the 19th of July, 1893.

After his return, collaterally with the practice of his profession, he accomplished a world of valuable literary labor. He was one of those lawyers who, in the apt language of Hallam, "scatter the flowers of polite literature over the thorny brakes of jurisprudence." Indeed, it has been said of him that to him the law was never a very jealous mistress. He had capacity for the highest success in his profession; but it was fortunate for the literature of our State that he devoted so much of his time and effort to literary pursuit.

From the origin of this Association he was one of its most valued and useful members, in full sympathy with its best purposes. In 1885 he contributed a valuable paper on the "Necessities of the Increase of Judicial Salaries in Georgia." This essay is a mine of information on the subject. With characteristic thoroughness, the writer obtained data showing the judi-

cial salaries paid in all the other States, and thereby demonstrated how niggardly was the provision made in Georgia for judicial compensation as compared with that which is paid elsewhere. The Association exhibited its appreciation of this paper by causing a large number of copies to be distributed throughout the State.

In 1891 Colonel Jones, as Chairman of the Committee on Memorials, presented to the Georgia Bar Association a sketch of John McPherson Berrien. This is the most interesting and valuable piece of legal biography to be found in our reports.

Colonel Jones's permanent publications number eighty—of which fourteen are books, ten are pamphlets, twenty-nine are addresses, five are works edited and translated, and twenty-two are magazine articles.

A good specimen of his style is the following pen-picture of Robert Toombs:

"In the morning, at high noon, and even beyond the meridian of his manhood, he was intellectually the peer of the most gifted, and towered. Atlas-like, above the common range. His genius was conspicuous. His powers of oratory were overmastering. His mental operations were quick as lightning, and like the lightning they were dazzling in their brilliancy and resistless in their play. Remarkable were his conversational gifts, and most searching his analysis of character and event. In hospitality he was generous, and in his domestic relations tender and true. The highest flights of fancy, the profoundest depths of pathos, the broadest range of biting sarcasm and withering invective, generalizations of the boldest character, and arguments of the most logical, were equally at his command. As a lawyer he was powerful, as an advocate well-nigh resistless. He was a close student, and deeply versed in the laws, statecraft and political history of this commonwealth and nation. In all his gladiatorial combats, whether at the bar, upon the husting or in legislative halls, we recall no instance in which he met his over-match. Even during his years of decadence there were occasions when the almost extinct volcano glowed again with its wonted fires, when the ivy-mantled keep of the crumbling castle resumed its pristine defiance with deep-toned culverin and ponderous mace; when amid the colossal fragments of the tottering temple, men recognized the unsubdued spirit of Samson Agonistes."

Of the writings of Colonel Jones, there are two works by which his reputation was achieved, and through which it will be perpetuated. We refer more especially to his "Antiquities of the Southern Indians," and to his "History of Georgia." As the one was instrumental in introducing him to the scholars and scientists of the Old World and in establishing his claims as an eminent authority upon the subject of archeology, so did the admirable qualities of the other commend it to the attention of the venerable Bancroft and win for its author the appellation of the "Macaulay of the South."

From his earliest years the subject of this memoir evidenced a love for the collation and classification of primitive objects. His collection, comprising some twenty thousand specimens, is one of unusual interest. It illustrates in the most complete manner the customs and occupations of the aboriginal population prior to the advent of Europeans, and before the cruel Spaniards had rudely interrupted their simple methods of life.

In association with the collection are several hundred typical objects of primitive manufacture from Europe, Asia, Africa, and other localities.

As a collector of autographs and historical documents, Colonel Jones occupied a distinguished place among those whose tastes were in harmony with his own.

Twice complimented with the degree of Doctor of Laws, and honored with membership in various literary and scientific societies, both in this country and in Europe; the beloved president of the Confederate Survivors' Association of Augusta, Ga., cherishing the memories it perpetuates, and expending his latest breath in its patriotic service; gallant in war, courteous in peace, gifted, magnetic, and never so happy as when celebrating the glories of Southern womanhood, Colonel Jones was a commanding figure in the community in which he lived, and by all who knew him his loss is sincerely deplored.

"So when a great man dies,
For years beyond our ken,
The light he leaves behind him lies
Upon the paths of men."

# APPENDIX 12.

# REPORT OF COMMITTEE ON NECESSITY FOR RE-LIEF OF THE SUPREME COURT.

At the annual session of the Georgia Bar Association, held in Macon in June, 1892, a committee was appointed to consist of the then incoming President and the ex-President of the Association to formulate a paper showing the overworked condition of the Supreme Court of the State, and to have that paper go to the press for publication, so that the work could be made known to the public for their consideration.

This report, which is now about to be submitted, is offered to the Association in obedience to the resolution just recited, the committee not being willing that their report should be published to the State as emanating from the Bar Association until it has received its approval.

The Supreme Court of the State of Georgia was created in 1845, and at that time, as now, was composed of three judges, whose duties, under the law, were the same then as now.

Since that time the official work of this tribunal has annually increased, both in the actual labor required to perform the duties and in the responsibilities of the duties themselves. This general statement, while not effective except to the judges themselves and those who perform professional duties in the courts, can certainly be made most startlingly impressive when the details of the changes which have occurred are succintly presented.

In 1845 the number of counties in the State of Georgia was ninety-three (93); to-day there are one hundred and thirty-seven (137) counties, an increase of more than forty-seven per cent in the actual number of counties.

Every county in the State of Georgia is a source from which litigation can and does ultimately find its way into the Supreme Court. There were only ninety-three of these sources when the court was originated, and there are now one hundred and thirtyseven of those same sources carrying business, work and responsibility to the judicial center of our system. In this regard it must also be born in mind that, in addition to the vast increase in the number of sources from which judicial work necessarily flows to the Supreme Court from the increase in the number of counties, there is also another source which adds labor to the Supreme Court. We have in this State a number of courts, now amounting to seventeen, known as city courts, now organized. from which bills of exceptions lie directly to the Supreme Court. and in addition to this, the Legislature has lately placed it in the power of any county in the State, within certain limits expressed. to organize a city court, and from time to time these city courts are organized, all of them being so constituted that bills of exceptions lie directly therefrom to the Supreme Court. So that in addition to the increase in the number of counties, the increase in the number of city courts must of necessity practically double the number of sources from which litigation must inevitably flow into the Supreme Court.

In 1856 the assessed value of properly in Georgia was \$495,-478,045, of which \$223,939,723 was slave property.

In 1893 the assessed value of property in Georgia was \$452,-644,907, this last valuation, of course, including no slaves. The excess, therefore, of property exclusive of slaves in 1893 over the period referred to is nearly \$200,000,000, involving possessions of all character of property other than slaves, and the labor and intricate work in connection with this vast increase in the amount of property necessarily imposes a vast increase in the amount of work upon the court, adds largely to the actual number of cases involving this property, and more than doubles this variety of litigation concerning this large property.

In 1848 the number of miles of railroad in this State was 605, embracing five railroads. In 1894 there are in the State of

Georgia 5,225 miles of railroad owned by more than fifty different railroad corporations. These vast enterprises have involved the courts in the use of time and judicial labor more than any other class of persons, natural or artificial, and by reason of the peculiarity of the litigation imposed an incalculable amount of labor upon the Supreme Court, not only on account of the immense sums involved in the litigation, but also on account of the difficulties of the questions presented, both at nisi prius and in the Supreme Court.

In 1845 the population of Georgia was as follows, to wit: white, 459,559; slaves, 314,766. The census of 1890 gave 1,-837,000, and it can be safely estimated that since that time the population of Georgia has so increased as to render the population reached the figure of 2,000,000.

In 1845 slaves could not litigate; now all persons can litigate. From the point of population the sources of litigation, therefore, have increased from the organization of the Supreme Court to this time more than four hundred per cent. and nearly five hundred per cent.

The first volume of Georgia Reports contains ninety-three cases, of which eight were criminal cases, four were ejectment cases, two were trover cases, five were will cases, five were corporation law cases, thirty-nine were commercial law cases, three were damage suits, nineteen were against administrators and executors, one mandamus, three appeals, and three against sheriffs.

Volume 90 of the Supreme Court Reports of the State of Georgia contains one hundred and forty-seven cases, covering thirty-three criminal cases, eight injunction cases, five ejectment cases, four will cases, five corporation law cases, forty-two com-

mercial law cases, thirty-seven damage suits, five suits against executors, one mandamus, one receiver's case, and one insurance case.

Your committee has taken the two extremes, the first volume and the ninetieth, for the purpose of illustrating the vast difference in the character of the litigation, and your committee does not hesitate to say that more than fifty per cent. of the cases decided in the 90th Georgia involve matters of decidedly great labor to the court, and more than double the labor and more than double the work involved in deciding the cases in the 1st Georgia, or in any volume of Georgia Reports up to the thirtieth.

Your committee has prepared a tabulated statement of each tenth volume of the Supreme Court Reports from its organization to the present time, and it requires only a cursory glance of that tabulation to discover how, year by year and decade by decade, judicial responsibilty has been augmented and aggravated, both by the actual increase in the number of cases, and the novelty and vexatious character of the questions presented for decision.

The Southeastern Reporter, Volumes 1 to 18, contains 3,050 Georgia cases, decided by three judges; 1,036 Virginia cases, decided by five judges; 710 West Virginia cases decided by four judges; 2,199 North Carolina cases, decided by five judges; 1342 South Carolina cases, decided by three judges.

By comparison, each judge in Georgia has decided 10163 cases; in Virginia 207\(\frac{1}{6}\) cases; in West Virginia 177\(\frac{1}{2}\) cases; in North Carolina 439\(\frac{4}{6}\) cases; and in South Carolina 447\(\frac{1}{3}\) cases.

During the period covered by these Reports, the Supreme Court of Georgia averaged about five (500) hundred cases per year, not including those withdrawn, dismissed and settled, nor cross-bills, which would make the average still greater, and in the language of one of the judges of the court, "the business is still increasing."

With these facts before the people of Georgia, how can any citizen loyal to the best interests of his State, loyal to the advancement of her honor and the perpetuity of her institutions, hesitate to assume the position that something should be done

to relieve this overburdened and hard-pressed branch of our government. The people should no longer appeal for a change; they should demand it.

Your committee has, to this point, simply discussed the labor which has been imposed upon this court. It is useless to say that the court is overworked. It is a fact that the court is overworked. It is equally a fact that no three men under the sun can perform this work in the way the Constitution of our State intends the labor of this court to be performed.

This committee and the writer of this report entertain the highest regard personally and professionally for the members of this court, and what this committee says, or shall say, upon this question, is said for the honor of the court and to bring to its relief the establishment of the amendment to the Constitution now being discussed, by which its labors may, to some extent, be more satisfactorily performed to the court, to the people, and to the honor and dignity of the profession of law.

So immeasurably has the labor of this court been augmented, that the court frequently is forced simply to decide cases without giving opinions therefor. No court can survive which simply decides without opinions on which its decisions are based. The discontinuance of the practice of giving reasoned opinions is justly regarded as one of the worst innovations of the servile judges of the Stuart period. Lord Bacon declared that the judges should produce the reasons of their sentence openly and in full audience to the court.

Sir Edmund Burke, in his report of 1794, declared the importance of giving reasons for the opinions of the court.

Lord Clarendon declared the same thing, and Lord Broome said, "that, with an enlightened bar and an intelligent people, the mere authority of the bench will cease to have any weight at all if it be unconnected with argument and explanation."

Our court, which we love, which we honor, which we venerate as one of our noblest institutions, cannot hope to command the respect and the authority to which it is justly entitled, if, by reason of its oppressive and multitudinous labors, the judges

have not the time to render the reasons for their opinions. The mere decision of a case without the reason for it, "serves more to vex than to enlighten."

. The poet, in his description of hell, says, "Chaos umpire sits, and by decision more embroils the fray by which he reigns."

Not only are the judges prevented from rendering reasons for their decisions, but the vast number of cases, daily, weekly, monthly and annually reported, crowding the libraries of the lawyers and the courts, add immeasurably to the already augmented labors of the court. These reports not only embarrass the court by requiring the time and attention to read them, but the reading of these cases takes away from the court the opportunity to perform certain other duties, and has a tendency to induce the court to cut off oral arguments at the bar.

Lord Coke said, "No man alone, with all his uttermost labors, nor all the actors in them, can attain unto a right decision; nor any court without solemn argument, where I am persuaded Almighty God openeth and enlighteneth the understanding of those desirous of justice and right."

One of the most profound of American lawyers and philosophers, Judge Dillon, says, in his latest work on the "Laws and Jurisprudence of England and America," that "He verily believes this to be true," and condemns likewise the practice of presenting cases on printed briefs. He distrusts the soundness of the decision of any involved or complex case submitted wholly upon briefs. This custom has grown into practice by reason of the tremendous augmentation of labors upon the court. To form some idea in this regard, it appears that in the eighty-eighth volume of the New York Reports the number of cases cited by counsel was 5,037. A single case reported in Volume 97 of the same reports shows that counsel on two sides cited 285 decisions.

In the first eighteen volumes of the "American and English Encyclopædia of Law" there are 830 complete treatises containing 603,551 citations; but it will serve no purpose to proceed further with statistics of this character. They are simply start-

ling, and no human mind, in the ordinary discharge of official duties, embarrassed by labors, embarrassed by duties which cannot be performed, can hope to compass these stupendous varieties of subjects with any degree of satisfaction to itself or the public.

There is but one way by which these difficulties can be overcome. It is now open to the people of Georgia, and that is by increasing the number of judges, so that a division of official duty can be had by which the work now imposed upon the three men can be divided amongst five.

Other suggestions might be made, but your committee, desiring to present practicable suggestions, has confined itself to matters about which there can be no dispute, and which must appeal, by reason of the facts stated, to the most partial mind. Your committee is satisfied that if these facts and these figures are submitted to the plain and honest intelligence of the people of Georgia, that people will respond with alacrity to the demand which these facts and figures make upon them, and they will give to the court that which it needs, additional members, that it may perform its duty as the Constitution requires and as the civilization of our people has the right to expect.

Not many months ago some workmen, digging in the earth in the south of France, discovored a pot of ancient gold coin which subsequent study determined had been struck to commemorate the victories of Roman Legions, our Carthaginian invaders, nearly twenty-five centuries ago. The heads and inscriptions on the coins were preserved entire, and their value as historical guides is declared to be inestimable in recovering that information hitherto regarded as lost.

Let us in honesty and vigor of purpose so work and move together, that the people may strengthen the judicial arm of our State to fix an ineffaceable impression upon American civilization, that neither time nor the changes of empire can readily destroy to leave it a blank in the world's history.

The bust outlasts the throne, The stamp Tiberius.



# APPENDIX 13.

# REPORT OF COMMITTEE ON ETHICS.

## Mr. President:

Your Committee on Ethics finds itself, at the threshold of all its inquiries, confronted with what seems to it an almost insuperable obstacle in the way of suggesting definite, practical measures looking to the improvement of the ethics of the legal profession.

To enter upon elaborate disquisitions upon the subject of ethics generally, is to wander into the broad field of conjectural and speculative philosophy without any reasonable hope of accomplishing a useful or beneficial result. It is an interesting and attractive field for those of our profession who possess the time and inclination to study in detail the intricate problems of social life, which, from time to time, have engaged the attention of the profoundest thinkers of past and present. Volumes have been written upon this most interesting of subjects; but illuminated as it has been by the acute reasonings of such men as Hobbes, Paley, and a host of others, the subject is still enshrouded in the profoundest mystery to the uninitiated. The lawyer, however, who feels inclined to analyze their reflections, must gird his loins for a struggle somewhat variant from that which he encounters in the prosecution of the ordinary duties of his chosen profession.

With that phase of ethics, however, with which your committee is called upon to deal, that is to say the ethics of the legal profession, he should be familiar as a part of the elementary education of a lawyer. Legal ethics, in its most comprehensive and general sense, includes all those rules of moral conduct which the enlightened conscience of an upright honest man formulates for his own guidance, and for the regulation of his conduct in his

relations with his fellow-members of the bar, and of those with whom he comes in contact in the practice of his profession. It follows from the definition of the term that no set of fixed unalterable rules can be framed to meet the varying conditions or the innumerable circumstances with which one is confronted in the course of an active professional career. Being answerable to his conscience for the integrity of his purpose, and as well for the propriety of his conduct, he must see to it that his conscience is sufficiently educated properly to direct him, and that it is consulted with such frequency as to remain quickened, and sensitive, and at all times responsive when he shall require its guidance.

So far as concerns mere rules of professional conduct, your committee finds that at its sixth annual session this Association adopted and promulgated, for the benefit of the profession in this State, a Code of Professional Ethics most admirably adapted to the purposes for which it is designed. The ethical theories are there beautifully and lucidly expressed, but the difficulty of which we spoke in the first instance lies in the fact that the individual lawyer prefers to regard these as rules of moral conduct binding upon all others, but not necessarily upon himself. difficulty is that the profession is disposed to ignore the principles of applied ethics. The difficulty is that conduct deplored, and indeed reprobated, in another, passes unchallenged the criticism of his own conscience. We find lawyers, who themselves engaged in doubtful, shady practices, speaking in terms of unmeasured contempt of those who imitate, if not their virtues, at least in this respect, their examples. The ill-gotten gains resultant from such practices, appealing to the cupidity of some, to the avarice of others, drives them forward in the mad desire to enjoy the emoluments of the profession, until reckless of means to the end, they overstep all the bounds of propriety and all the barriers interposed by conscience, leaving them at last engaged in the mad struggle for wealth, wholly forgetful of the amenities and moral obligations of their calling, and as well exposing an honorable profession to public ridicule and contempt.

These conditions are the natural sequence of a non-observance

of the ordinary rules of moral conduct which should regulate the intercourse of lawyers with each other. They breed "shysters" and a class of earnest "hustlers after business," who, by their disreputable practices, bring shame and discredit upon the legal profession. It has been said that this is a commercial age; it is more, it is an age of intense materialism. It is an age when all things, the good and the true, are being prostituted and devoted The spirit of materialism has seized upon church to Mammon. and state, and government, and society, and the domestic relations, upon all the institutions of the country, and the legal profession has not entirely resisted its allurements; but, on the contrary, forgetful of its holy mission, of its grander purposes, and the best traditions of the glorious past, it too kneels to the golden It too has become commercialized. It has adopted the worst and rejected the better methods and practices of the commercial world, and it is well that we should pause and take an It is true that there are those of the legal account of ourselves. profession (and many they are) who have made no concession to the almost universal desire for gain. These are the grand exemplars, who stand for all that is good, and pure, and noble, and honorable among men, and it is they who must ultimately save our profession from what would otherwise be a well earned and justly deserved public contempt. To such men, who in the face of every temptation, in defiance of every influence to evil, remain true to themselves and to the better and nobler attributes of their professional life, we owe a debt of gratitude which cannot be repaid.

Your committee is of the opinion that most of the lawyers who engage in reprehensible practices are not influenced by an inherently vicious spirit, but being uneducated in the elementary principles of good morals, they, through ignorance, allow themselves first to enter upon and then continue in the downward course.

In order to have men square their conduct by ethical rules, they must be taught ethics; and with the hope of checking this growing evil, with the hope of suggesting some means which will tend to elevate the moral standard of the legal profession, we recommend, that as a condition precedent to admission to the bar in this State, the circuit judges be requested to require all applicants to be specially examined upon that portion of the Code which defines the duties of lawyers, and together therewith upon the elementary principles of legal ethics as laid down, approved and promulgated by this Association.

All of which is respectfully submitted.

SPENCER R. ATKINSON, Chairman.

# APPENDIX 14.

# SYMPOSIUM ON WOMAN AT THE GEORGIA BAR-

PAPERS BY
BURTON SMITH, ESQ., AND A. H. DAVIS, ESQ.,
BOTH OF ATLANTA.

## A

## MR. SMITH'S PAPER.

The propriety of permitting women to practice at the bar is not connected with female suffrage.

As to the latter, it may be sufficient to say that the majority of women do not now desire suffrage, and its time has not come. I think, however, that the legal profession and all other honest methods of gaining a livelihood should be open to women. course, legal work is not woman's ideal work. Her ideal life. her highest life, is the life of a wife and mother; but woman often is forced to labor for her daily bread, for the daily bread of her children, and sometimes, even, for a worthless or unfortunate husband. These cases occur so often, for so many reasons, that it is idle to specify. When she becomes a bread-winner, she should have every chance afforded men. But it is said that the practice of law is unwomanly; that it brings woman too much in public, too much in contact with the world. Whether or not it is unwomanly to appear in public, whether or not it is unwomanly to be brought in contact with the world, it is certainly true that every method of earning a livelihood forces her before the public, or in contact with the world, sometimes to a greater, sometimes to a less extent. A lady sings in a church choir-she certainly is brought, in that instance, as much before the public asshe would be in the practice of law. Nevertheless, we all know women of the highest culture, refinement and delicacy who fill such positions. Those ladies who teach school, who keep boarding-houses, who write books, who practice medicine, who are stenographers, all find themselves brought sharply in contact with the world.

The office work of our profession offers ladies advantages over many other callings. It is natural that daughters born of families of lawyers should have talent for the profession of their fathers, and if forced by unfortunate circumstances to provide for themselves, in my mind it is clear that the doors of the legal profession should be open to them. I believe that every field of labor should be open to woman, and compensation for the same service should equal that of men.

Those women who desire to devote themselves to home duties can always do so. Those women who are not satisfied with home life cannot be made satisfied by any law.

A womanly woman will maintain her dignity at all times and under all circumstances, and a bold and manly woman will not be prevented from manifesting herself by any restrictions. She will make more disturbance, be more before the public, clash more with the world struggling for an entrance into the calling which she seeks, or clamoring for suffrage, than if admitted to the profession or given suffrage.

Mr. Smith then added orally: The latter type of woman I think is very well illustrated by an experience of Mr. Albert Cox. Gentlemen of this bar know that Mr. Cox devotes a part of his income to farming. Mr. Cox has a farm, and has a son named Charlie. Charlie came to him the other day and said, "Papa, I have got a chicken I want to sell." Mr. Cox says, "Why?" Charlie says, "I want to sell it." Mr. Cox says, "It is your chicken, and you have a right to sell it; but why do you want to sell it?" "Well," says Charlie, "Papa, it cackles and it crows, and I don't know what it is." [Laughter.]

R

## MR. DAVIS'S PAPER.

Woman, in all her phases, is a perplexing question, but especially in the latest. After weeks of deliberation, the mind can scarcely decide which is the proper view as to the theoretical admissibility of woman to the Georgia bar. entirely from the prejudice of the long-established custom is Equally difficult is it to exclude the milder, but very difficult. no less effective, impulse to give woman every opening she desires to intellectual and business activity. Of all cases, this is the hardest to try without emotional justice. The old-fashioned idea that the sole mission of woman is the raising of children. or else a useless life of regretful retirement, has been considerably modified of late years, in consequence, no doubt, of a real social necessity. Woman has taken her place at the bookkeeper's desk, at the telegraph instrument, behind the counter in shop and store, at the typewriter, and besides other kinds of work not requiring great physical exertion, is now making quiet but deep inroads in the practice of the disciples of Esculapius. She has long had a place in music, art, education, and. others of the more refined and intellectual pursuits. should she not explore the mysteries of Blackstone, Coke, and the other masters of jurisprudence?

Woman as a practicing lawyer may be viewed in three aspects: (1) As a brief-maker; (2) as an office practitioner; and (3) as an advocate. With proper training, there is no reason why woman may not do as good, if not better, work than man as a brief-maker. She has patience enough and is not lacking in perseverance. She excels in these two great essentials of a good brief-maker. In office practice she could do well in many departments, and besides fill a special place which is now awkwardly occupied by men. So long as we have women suitors, women lawyers would seem to be, if not a necessity, at least a grateful convenience to their litigant sisters. Some women would prefer to confide in man, but others would prize-

the privilege of consulting with a sister learned in the law. There is no dispute that a woman is capable of giving better advice in many emergencies than a man could give. Now, if you add to this natural faculty for giving advice the advantage of thorough training in law, you will have a class of professional advisers who will easily stand comparison with their male competitors.

To be an advocate and engage in the actual trial of cases. woman seems less fitted by nature and custom than for the other duties of a lawyer. But she might overcome this; and we can imagine a pretty woman, who is a good talker, having some influence with a jury of men. This suggestion brings up a consideration which is involved, though not expressed, in the title of our subject. If women are to practice in the court-room, then lay-women ought to serve on the jury, to counteract the presumption or probability of undue influence. And promotion to the bench ought to be open to our sisters-in-law. One of the earliest trials of which we have an authentic record, is where two women disputed for the possession of a child. learned judge, who had hundreds of wives, fortunately knew women well, and was fully capable of deciding between them. But no judges of our time have had Solomon's opportunities for acquiring so profound a knowledge of feminine nature; and what one of them would not feel a hesitancy and disqualify, if possible, when a woman is plaintiff against a woman defendant? In many respects women would make excellent judges. tural keen sense of justice, a certain fearlessness in speaking her mind, and pure, upright character constitute most desirable elements of fitness for judicial duties. Many experts in human nature declare that the moral perceptions of women are finer than those of men. And in administering justice, nothing is more important than a deep and true insight into motives and morals. Indeed, the ideal court would consist of a good man and a good woman working in perfect accord for the discovery and enforcement of right between disagreeing parties. The practical objection is that the court itself might disagree. But some provision could be made for such a contingency.

As to the effect on woman of admission to the bar, that is largely problematical. Judging from what she has done, and the way she has conducted herself in the profession of medicine and other lines of business, there seems to be no cause for apprehension that the active and exposed mode of life necessitated by the practice of law would tend to a decadence of moral principle in women so practicing. Is it not rather true that woman. with all her conceded excellence of character, may vet learn fine lessons of probity, right conduct, and moral responsibility as a servant at the sacred altar of justice, which otherwise is a sealed and unknown book to her? The educational value and intellectual stimulus to woman of close contact with the law is a theme which might be much enlarged upon. Doubtless certain lines of practice and trials of certain character would be avoided by the woman practitioner. This would be well regulated by public sentiment and criticism, to which she is usually quite sensitive. if there were any tendency on her part to engage in cases of auestionable propriety, or of undoubted impropriety.

As to the effect on the bar and the administration of justice, it must be observed that the true influence of woman on man is ennobling, refining, and purifying. Wherever the true woman goes she takes this influence with her. She would bring it to the bar, into the court-room. It may sound absurd to speak of refining proceedings in our court-rooms. But no one familiar with them will deny that there is often much unnecessary coarsenesss and sometimes vulgarity witnessed in a trial, which has a bad influence on public morals. In cases necessarily involving matters offensive to modesty, woman should and would be absent. In cases not necessarily involving such matters, her presence would exert a prohibitive influence on useless digressions from propriety. But woman's influence at the bar would be specially felt in her deportment and example as a conscientious, high-minded lawyer.

As to the probability of women being admitted to the bar in Georgia, the day is not far distant. Not long since, I read, with some surprise, that the Court of Appeals of Virginia, by

a majority of one vote, decided that Mrs. Belva Lockwood be admitted to practice in all the courts of the Old Dominion. Virginia has had some reputation for conservatism. Georgia is known as a progressive State. The experiment of allowing women to practice law will before long be tried in this State as it is being tried in others. Why not offer to woman seeking employment the opportunities of a noble profession, replete with moral and intellectual stimulants of the greatest force, and claiming the most beautiful of ideals, the triumph of justice and the doing of good to men?

15

# CONSTITUTION AND BY-LAWS.

## ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice throughout the State, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar of Georgia. This Association shall be known as The Georgia Bar Association.

## ARTICLE II.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State in good standing, and who shall also be nominated as hereinafter provided. The judges of the Supreme, Superior and City Courts of this State, and the judges of the Federal Courts in this State, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members, and without liability for the payment of dues.

## ARTICLE III.

The officers of this Association shall consist of one President, five Vice-Presidents, a Secretary, a Treasurer, an Executive Committee to be composed of the Secretary and Treasurer, together with four members to be chosen by the Association, one of whom shall be Chairman of the committee. Each of these officers shall be elected at each annual meeting for the year ensuing, but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-laws.

# ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon recommendation of the Executive Committee. All elections for membership shall be by ballot, and several nominees, if from the same county, may be voted for upon the same ballot, and, in such case, placing the word "no" against any name or names, upon the ticket, shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat any election for membership. Except during the meetings of the Association, the Executive Committee shall have full power to admit applicants to become members of this Association.

## ARTICLE V.

Each member shall pay five dollars to the Treasurer as annual dues, in advance, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable and payment thereof enforced, as may be provided by the By-laws. Members shall be entitled to receive all publications of the Association free of charge.

## ARTICLE VI.

By-laws may be adopted at any annual meeting of the Association by a majority of the members present.

## ARTICLE VII.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:

- 1. On Jurisprudence and Law Reform.
- 2. On Judicial Administration and Remedial Procedure.
- 3. On Legal Education and Admission to the Bar.
- 4. On Grievances.
- 5. On Memorials.
- 6. On Federal Legislation.
- 7. On Interstate Law.
- 8. On Legal Ethics.

A majority of the members of any committee, who may be present at any meeting of such committee, shall constitute a quorum for the purposes of such meeting. Vacancies in any office provided for by this Constitution shall be filled by appointment by the President, and the appointment shall hold office until the next meeting of the Association.

## ARTICLE VIII.

The Executive Committee shall perform such duties as may be assigned to it by the President, or as may be defined by the By-laws, except as herein otherwise directed.

### ARTICLE IX.

This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum. The Executive Committee shall require thirty days' notice of the time and place of meeting by publication in a public newspaper to be given, which publication shall be made by the Secretary.

## ARTICLE X.

• The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be provided by the By-laws.

## ARTICLE XII.

This Constitution shall go into immediate effect. This Association shall be incorporated under the laws of the State of Georgia as soon as practicable, and until such incorporation all money and property of said Association shall be vested in the President and Treasurer, as trustees thereof, who shall pay over and deliver the same to said corporation as its property, as soon as the corporation is created by law.\*

The charter was duly obtained. See First Report, page 16.

# BY-LAWS.

T.

The President shall preside at all meetings of the Association, and in case of his absence one of the Vice-Presidents shall preside. He shall open each meeting with an annual address.

TT.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association with the concurrence of the President. He shall notify the officers and members of their elections, and shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be \$200 per annum.

III.

The Treasurer shall collect and, under the direction of the Executive Committee, disburse all funds of the Association; he shall report annually, and oftener if required; he shall keep regular accounts, which shall at all times be open to inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office he shall execute a bond, with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of five thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof. His salary shall be \$100 per annum.

IV.

The Executive Committee shall meet upon the call of the Chairman. They shall have power to arrange the programme for the annual meetings, and to make such regulations, not inconsistent with the Constitution and By-laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall examine and report upon all matters proposed to be published by the

authority of the Association, and attend to the publication and distribution of the same. They shall have the power to make the Association liable for any debts amounting to more than half of the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

v.

At each annual, stated or adjourned meeting of the Association, the Order of Business shall be as follows:

- 1. Reading minutes of preceding meeting.
- 2. Address of the President.
- 3. Report of Treasurer.
- 4. Report of Executive Committee.
- 5. Elections, if any, to membership.
- 6. Report of other standing committees.
- 7. Report of special committees.
- 8. Election of officers and appointment of committees.
- 9. Miscellaneous business.

This Order of Business may be changed by a vote of a majority of the members present.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

#### VI.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his annual dues, he shall be deemed to have declined to become a member.

## VII.

In pursuance of Article VII. of the Constitution, there shall be the following standing committees:

- 1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such, as in their opinion, may be entitled to the favorable consideration of the Association.
- 2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association such action as they may deem expedient. Both of the foregoing committees shall invite suggestions on the topics confided to their charge from all the

members of the Association, and if they see fit, from all the lawyers of the State; and where their report recommends changes in legislation, the Association may appoint either the same or other committees to bring such matters properly to the attention of the General Assembly.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes it is expedient to propose, in the system and mode of legal education and of admission to the practice of the profession in the State of Georgia.

It shall be the duty of the foregoing standing committees to consider the suggestions made in each address and paper presented at each annual meeting of the Association, which fall within the scope of the topics confided to said committees, and to report thereon at the next annual meeting.

- 4. A Committee on Grievances, who shall be charged with the hearing of all complaints, which may be made in matters affecting the interest of the legal profession, or the professional conduct of any member of this bar, and the administration of justice, and to report the same to the Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against such offenders and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of moneys subject to be appropriated by them.
- 5. A Committee on Memorials, who shall prepare and furnish to the Secretary brief and appropriate notices of members who have died during the year preceding each annual meeting; such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of the bench or bar of Georgia, now deceased, having special reference to his professional career, and have the same presented at the annual meetings; and, whenever practicable, they shall secure a steel engraving or other suitable picture of the subject of the sketch to be inserted in the published proceedings.
- 6. A Committee on Federal Legislation, who shall be charged with the duty of examining and reporting upon such Federal legislation, proposed or enacted, as may be of interest to the legal profession, and especially such as affects the Federal judicial system, and procedure and practice in the Federal courts.
- 7. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed by the American Bar Association, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest; and of suggesting propositions looking to the same end, and, where such action is favored by the Association, to bring the same to the attention of the General Assembly, and to endeavor to secure the adoption of the legislation so recommended.



8. A Committee on Legal Ethics, who shall be charged with the duty of reducing to the form of rules or canons the principles of ethics regulating the relations of lawyers to the courts, the public, their clients and each other; with the further duty of taking such actions as they may deem best, in case any departures from these principles by members of the bar of the State come to their notice or are brought to their attention.

## VIII.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof, and of all special committees, transmitted to the Secretary within thirty days from each annual meeting, and shall continue in office until the annual meeting of the Association next after their appointment. and until their successors are appointed, with the power to adopt rules for their own government, not inconsistent with the Constitution or these By-laws. The Secretary shall, within thirty days after receipt thereof from the President, notify each committeeman, giving full list of his committee. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent of his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such a rule.\*

## IX.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matters therein alleged are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him.

If, after hearing his explanation, the committee shall deem it proper that there should be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as near as may be to the provisions of \$\$\times\$420 and 434 of the Code, inclusive.

<sup>\*</sup>As to payment of expenses of committees, see Report for 1885-86, page 70. As to printing committee reports in advance of the annual meetings, see Report of 1886-87, page 6.

## X.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or to membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office; but five negative votes shall be sufficient to defeat an election to membership.

#### XI.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor, but if a vacancy occur in the office of President it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold office for the unexpired term of his predecessor.

## XII.

All annual dues to this Association shall be paid in advance by each member upon his election, and in advance one month before each annual meeting for each year during membership, and any member failing to pay his annual dues in such mannar shall be in default, and upon the order of the President, the Secretary shall strike the name of such member from the roll of membership, unless, for good cause shows, the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

#### XIII.

These By-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority vote of those present.

#### XIV.

Any officer may resign at any time, upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation, with an indorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## XV.

The Association shall have its annual meeting each year at such time and place as may be fixed by the Executive Committee, and by the direction of the Executive Committee the Secretary shall give notice of the time and place of such annual meeting by publication in a public newspaper for thirty days. If the President and Executive Committee shall determine that it is necessary for said Association to hold any other meeting during any year, the same shall be held at such time and place as the President and Executive Committee may fix, and upon twenty days' notice of such time and place, to be given by the Secretary, by publication in a public newspaper, and the Secretary shall give this notice upon the order of the President.

## XVI.

No resolution complimentary to any officer or member shall be entertained.

## XVII.

All addresses, essays and other papers, read at the meetings of the Association, shall be transmitted to the Secretary within thirty days from the adjournment of the annual meeting; and, if not so furnished, the Executive Committee shall proceed to publish the proceedings without such papers.

# OFFICERS AND COMMITTEES.

1894-95.

## PRESIDENT

# W. H. FLEMING.

# VICE-PRESIDENTS.

First-George Hillyer, Third-W. G. Charlton,

Second-L. C. LEVY.

Fourth-J. H. MARTIN,

Fifth-C. A. TURNER.

# EXECUTIVE COMMITTEE.

ALEX. W. SMITH,

W. B. HILL.

BURTON SMITH.

A. H. MACDONELL.

AND THE SECRETARY AND TREASURER ex officio.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON.

# STANDING COMMITTEES OF THE GEORGIA BAR ASSOCIATION FOR 1894-95.

## ON JURISPRUDENCE AND LAW REFORM.

W. B. Hill, Chairman	Macon.
A. O. Bacon	Macon.
Clifford Anderson	Macon.
Dupont Guerry	Macon.
C. C. Kibbee	Macon.
ON JUDICIAL ADMINISTRATION AND REMEDIA	L PROCEDURE.
N. J. Hammond, Chairman	Atlanta.
Marshall J. Clarke	Atlanta.
T. B. Felder, Jr.	Atlanta.
A. J. Cobb	Atlanta.
F W Mortin	Atlanta

ON LEGAL EDUCATION AND ADMISSION TO T	HE BAR.
H. R. Goetchius, Chairman	
L. C. Levy	
J. M. McNeill	
A. C. Pate	
J. Hansell Merrill	
ON GRIEVANCES,	
W. Dessau, Chairman	<b>W</b>
A. M. Foute	
Joseph Ganahl	
W. W. Gordon, Jr.	
C. P. Steed	
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ON MEMORIALS.	
F. G. duBignon, Chairman	
W. R. Leaken	
J. H. Martin	
I. E. Shumate	Dalton
FEDERAL LEGISLATION.	
W. C. Glenn, Chairman	Atlanta.
W. T. Davidson	
J. T. Jordan	Sparta.
J. M. Stubbe	Dublin.
Arthur Hood.	Cuthbert.
ON INTERSTATE LAW.	
G. A. Mercer, Chairman	Savannah.
P. W. Meldrim	
S. B. Adams	
W. W. Fraser	Savannah.
W. S. Chisholm	
ON ETHICS.	
J. A. Billups, Chairman	Madison.
H. D. McDaniel	
M. P. Reese	
H. W. Hill	
L. A. Wilson	

# **OFFICERS**

OF

# THE GEORGIA BAR ASSOCIATION FOR PAST TERMS.

## 1883-1884.

President.

L. N. WHITTLE.

Vice-Presidents.

1—Charles C. Jones, Jr. 2—Henry Jackson.

3-M. H. BLANDFORD.

4-Pope Barrow.

5-George A. Mercer.

Secretary and Treasurer-W. B. HILL.

1884-85.

President.

WILLIAM REESE.

Vice-Presidents.

1-F. H. MILLER.

3-W. S. BASINGER.

2-L. F. GARRARD.

4-W. M. HAMMOND.

5-H. P. Bell.

Secretary.

W. B. HILL.

Treasurer.

S. BARNETT, JR.

## 1885-86.

# President.

# JOSEPH B. CUMMING.

Vice-Presidents.

1-P. L. MYNATT

3-J. M. PACE.

2-W. A. LITTLE.

4-W. H. DABNEY.

5-F. G. DUBIGNON.

Secretary.

Treasurer.

W. B. HILL.

S. BARNETT, JR.

## 1886-87.

# President.

# CLIFFORD ANDERSON.

Vice-Presidents.

1-N. J. HAMMOND.

3-A. S. ERWIN.

2-W. A. LITTLE.

4-A. H. HANSELL.

5-J. C. C. Black.

Secretary.

Treasurer.

W. B. HILL.

S. BARNETT, JR.

#### 1887-88.

President.

# WALTER B. HILL.

Vice-Presidents.

1-Geo. A. MERCER.

3-I. E. SHUMATE.

2-POPE BARROW.

4-B. P. Hollis.

5-E. N. Broyles.

Secretary.

Treasurer.

J. H. LUMPKIN.

S. BARNETT, JR.

### 1888-89.

## President.

# MARSHALL J. CLARKE.

# Vice-Presidents.

1-J. C. C. BLACK.

3—С. С. Ківвее.

2--A. S. CLAY.

4-A. T. MACINTYRE, JR.

Secretary.

Treasurer.

JOHN W. AKIN.

S. BARNETT, JR.

## 1889-90.

# President.

# GEORGE A. MERCER.

# Vice-Presidents.

1-W. DESSAU.

3-John L. Hopkins. 4-S. R. Atkinson.

2-Pope Barrow.

Treasurer.

Secretary.

John W. Akin.

S. BARNETT, JR.

# 1890-91.

# President.

# FRANK H. MILLER.

## Vice-Presidents.

1-M. J. CLARKE.

3-P. W. MELDRIM.

2—C. N. FEATHERSTON.

4-M. P. Reese.

5-George D. Thomas.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON.

#### 1891-92.

President

### JOHN PEABODY.

Vice-Presidents.

1-A. O. BACON.

3-M. P. Reese.

2-John I. Hall.

4-John W. Park.

5-W. H. FLEMING.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON.

#### 1892-93.

President.

W. DESSAU.

Vice-Presidents.

1-John W. Park.

3-M. P. Reese.

2-W. M. HAMMOND.

4-W. H. FLEMING.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON.

#### 1893-94.

President.

## LOGAN E. BLECKLEY.

Vice-Presidents.

1-W. H. FLEMING.

3.—H. R. GOETCHIUS. ·

2-C. N. FEATHERSTON.

4-A. H. MACDONELL.

5-С. С. Ѕмітн.

Secretary.

Treasurer.

JOHN W. AKIN.

Z. D. HARRISON..

# HONORARY LIFE MEMBER.\*

Major Charles H. Smith ("Bill Arp")-----Cartersville.

# ROLL OF HONORARY MEMBERS.+

Attaway, Shelby, Judge City Court	Cartersville.
Beck, E. W., Judge City Court	
Bleckley, L. E., Chief Justice Supreme Court	
Bower, B. B., Judge Albany Circuit	
Brown, W. F., Judge City Court	
Butt, W. B., Judge Chattahoochee Circuit	
Clark, Richard H., Judge Stone Mountain Circuit	
Cobb, Howell, Judge City Court	
Eve, Wm. F., Judge City Court	
Falligant, R. F., Judge Eastern Circuit	
Fish, W. H., Judge Southwestern Circuit	
Freeman, Alvan D., Judge City Court	
Gamole, Roger L., Judge Middle Circuit	
Gober, Geo. F., Judge Blue Ridge Circuit	
Griggs, J. M., Judge Pataula Circuit	
Hansell, A. H., Judge Southern Circuit	
Hardeman, J. L., Judge Macon Circuit	
Harris, S. W., Judge Coweta Circuit	
Henry, W. M., Judge Rome Circuit	
Hunt, J. J., Judge Flint Circuit	
Hutchins, N. L., Judge Western Circuit	
Janes, Charles G., Judge Tallapoosa Circuit	
Jenkins, W. F., Judge Ocmulgee Circuit	-
Jones, H. C., Judge City Court	
Lumpkin, J. H., Judge Atlanta Circuit	
Lumpkin, Samuel, Associate Justice Supreme Court-	

<sup>\*</sup>See 10 Georgia Bar Association, page 6.

<sup>†</sup> See Constitution, Article 2—The names of those of the above who, before their elevation to the Bench, were regular members, are transferred from the Roll of Regular to the Roll of Honorary Members.

MacDonell, A. H., Judge City Court	Savannah.
Milner, T. W., Judge Cherokee Circuit	Cartersville.
Newman, W. T., Judge U. S. District Court.	
Reese, Seaborn, Judge Northern Circuit	Sparta.
Roney, H. C., Judge Augusta Circuit	Augusta.
Ross, John P., Judge City Court	Macon.
Russell, D. A., Judge City Court	Bainbridge.
Simmons, T. J., Associate Justice Supreme Court-	Atlanta.
Smith, A. H., Judge City Court	
Smith, C. C., Judge Oconee Circuit	Hawkinsville.
Smith, Marshall L., Judge City Court	Gainesville.
Speer, Emory, Judge U. S. District Court	
Speer, Emory, Judge U. S. District Court	Macon.
	Macon. _Harmony Grove.
Speer, Emory, Judge U. S. District Court Stark, W. W., Judge City Court	MaconHarmony GroveWaycross.
Speer, Emory, Judge U. S. District Court	MaconHarmony GroveWaycrossRome.
Speer, Emory, Judge U. S. District Court	MaconHarmony GroveWaycrossRomeAtlanta.
Speer, Emory, Judge U. S. District Court	MaconHarmony GroveWaycrossRomeAtlantaBlairsville.
Speer, Emory, Judge U. S. District Court	MaconHarmony GroveWaycrossRomeAtlantaBlairsvilleAtlanta.
Speer, Emory, Judge U. S. District Court	MaconHarmony GroveWaycrossRomeAtlantaBlairsvilleAtlanta.

# ROLL OF ACTIVE MEMBERS.

Abbott, B. F	_ Atlanta.
Adams, S. B.	Savannah.
Akin, John W	Cartersville.
Allen, J. Y.	Thomaston.
Anderson, Clifford	Macon.
Anderson, C. L.	Atlanta.
Andrews, W. P.	Atlanta.
Arnold, F. A	Macon.
Arnold, Reuben	Atlanta.
Arnold, R. R.	_ Atlanta.
Ashley, D. C.	Valdosta.
Atkinson, S. R.	
Atkinson, T. A.	Greenville.
Bacon, A. O	Macon.
Barnett, Samuel	Atlanta.
Barrow, Pope	Savannah.
Bartlett, A. L.	Brownsville.
Bartlett, C. L.	Macon.
Basinger, W. S.	Athens.
Battle, C. E.	Columbus.
Bayne, M. G.	Macon.
Beck, M. W	Jackson.
Bennett, John W	Jesup.
Berner, R. L.	Forsyth.
Billups, J. A.	Madison.
Bishop, James, Jr.	Eastman.
Black, J. C. C	Augusta.
Blandford, M. H.	Columbus.
Bloodworth, O. H. B.	Forsyth.
Blount, Jas. H., Jr.	
Branham, J.	Rome.
Brantley, W. G.	Brunswick.
Brewster, P. H.	
Brown, J. L.	Atlanta.

Burnett, Wiley B.	Athens.
Bush, I. A	
Calhoun, Patrick	
Calhoun, W. L.	
Callaway, E. H.	
Calman, Jas., Jr.	
Cameron, H. C.	
Candler, Jno. S.	
Cannon, L.	
Carson, A. A.	
Chappell, T. J.	
Charlton, W. G.	
Chisholm, W. S	-Savannah.
Clarke, M. J.	_Atlanta.
Clifton, William	-Savannah.
Cobb, A. J	-Atlanta.
Cobb, T. R. R.	- Atlanta.
Cohen, C. H.	-Augusta.
Cohen, E. A	Macon.
Colville, Fulton	Atlanta.
Cooledge, A. F	Atlanta.
Cooper, J. R.	Macon.
Cotten, J. A.	Thomaston.
Crawford, Tol Y	
Crovatt, A. J.	Brunswick.
Cumming, Bryan	Augusta.
Cumming, J. B.	Augusta.
Cunningham, H. C.	
Cutts, E. H.	Americus.
Dabney, W. H	Rome.
Dasher, Arthur	
Davidson, W. T.	Augusta.
Davis, A. H.	Atlanta.
Davis, B. M.	Macon.
Davis, J. B. S.	Newnan.
DeLacy, J. F.	Eastman.
Dell, J. C	
Denmark, B. A.	
Denmark, E. P. S.	Quitman.

Dessau, Washington	Macon.
Dorsey, R. T.	Atlanta.
Douglas, Hamilton	Atlanta.
Dozier, A. A	Columbus.
DuBignon, F. G.	Savannah.
Ellis, Roland	Macon.
Ellis, W. D.	Atlanta.
Erwin, A. R.	Cordele.
Erwin, A. S.	Athens.
Erwin, Marion	Macon.
Erwin, R. G.	Savannah.
Estes, Claude	Macon.
Estes, Hubert	Macon.
Eve, F. E	Hazen, Columbia Co.
Featherston, C. N.	Rome.
Felder, T. B., Jr.	Atlanta.
Felton, W. H., Jr.	Macon.
Fite, A. W	Cartersville.
Fleming, W. H.	Augusta.
Fort, Allen	Americus.
Foster, F. G.	Madison.
Foute, A. M	Cartersville.
Fraser, W. W	Savannah.
Freeman, Davis	Savannah.
Freeman, M. R	Macon.
Fulwood, C. W.	Tifton.
·Ganahl, Joseph	Augusta.
Garrard, L. F	
Garrard, Wm.	Savannah.
Gary, W. T	Augusta.
Gilbert, S. P.	Columbus.
Giles, A. S	Macon.
Glenn, J. T.	Atlanta.
Glenn, W. C.	Atlanta.
Goetchius, H. R.	Columbus.
Goode, S. W	Atlanta.
Goodyear, C. P	
Gordon, W. W., Jr.	
Grace, W. J.	Macon.

Graham, E. D.	_Graham.
Green, D. W	
Grimes, T. W	-Columbus.
Guerry, Dupont	
Gustin, Geo. W.	_Macon.
Haden, C. J.	_Atlanta.
Hall, John I.	-Griffin.
Hall, Joseph H	_Macon.
Hamilton, Harper	Rome.
Hammond, N. J.	_Atlanta.
Hammond, T. A., Jr.	_Atlanta.
Hammond, W. M.	Thomasville.
Hammond, W. R.	Atlanta.
Harley, J. A.	
Harley, R. B.	
Harris, Marion	
Harris, Nat	Rome.
Harrison, Z. D.	-Atlanta.
Hatcher, S. B.	
Hawkins, E. A.	_Americus.
Haygood, J. W	Montezuma.
Haygood, W. A.	-Atlanta.
Hill, B. H.	-Atlanta.
Hill, C. D.	Atlanta.
Hill, H. W	
Hill, W. B	
Hillyer, George	
Hitch, S. W.	Waycross.
Hobbs, Richard.	-Albany.
Hodges, Robert	Macon.
Holton, G. J.	Baxley.
Hood, Arthur	
Hopkins, Chas. T.	Atlanta.
Hopkins, J. L.	
Howell, Albert, Jr.	
Hutchins, N. L., Jr.	- Atlanta.
Jackson, Henry	
Jackson, W. E.	Augusta.
Jenkins, J. C.	Atlanta.

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Johnson, Richard	-Clinton.
Jones, Malcolm	
Jordan, J. T.	
Kibbee, C. C.	•
Kiddoo, W. D.	
King, A. C.	
King, Porter	
Kingsberry, S. T.	
Kittles, H. C.	-Sylvania.
Kontz, E. C.	
Krauss, D. W	Brunswick.
Lamar, J. R.	_Augusta.
Latham, T. W.	
Lawson, T. G.	_Eatonton.
Lawton, A. R.	-Savannah.
Lawton, A. R., Jr.	Savannah.
Leaken, W. R.	_Savannah.
Lester, R. E	_Savannah.
Levy, L. C	_Columbus.
Lewis, H. T.	-Greensboro.
Little, John D.	_Columbus.
Little, W. A.	-Columbus.
Lumpkin, E. K.	$_{\perp}$ Athens.
Lumpkin, J. H.	_Americus.
MacIntyre, A. T., Jr.	-Thomasville.
Mackall, W. W.	-Savannah.
Martin, E. W.	_Atlanta.
Martin, J. H.	Hawkinsville.
Mathews, H. A	Fort Valley.
McAlpin, Henry	Savannah.
McCord, C. Z.	-Augusta.
McDaniel, H. D.	Monroe.
McDonald, J. C.	_Waycross.
McLaughlin, B. F.	-Greenville.
McLendon, S. G	_Thomasville.
McMichael, Morgan	_Columbus.
McNeil, J. M.	
McWhorter, H.	Lexington.

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Miller, F. H.	_Augusta.
Miller, W. K.	_Augusta.
Minis, A.	_Savannah.
Mobley, J. M	-Hamilton.
Morgan, T. S., Jr.	_Savannah.
Morrison, W. E.	_Savannah
Munro, G. P.	_Buena Vista.
Mynatt, P. L.	
Napier, George M	
Neel, J. M	
Newman, Emile	
Nottingham, W. D.	
Nussbaum, Sigmund	
O'Byrne, M. A.	
O'Neil, Jas. F.	
Pace, J. M	
Palmer, H. E. W.	
Park, J. W.	
Pate, A. C.	
Payne, J. C.	
Peabody, F. D.	
Peeples, H. B.	
Peeples H. C.	Atlanta.
Pottle, J. E.	_Milledgeville.
Preston, J. W.	
Price, W. P.	
Proudfit, A.	-
Reese, M. P.	
Reese, W. M	
Rockwell, T. D.	
Rodgers, R. L.	
Rosser, L. Z.	
Rountree, D. W.	

Russell, A. H.	-Bainbridge.
Russell, D. A.	-Bainbridge.
Sandwich, M. H.	Thomaston.
Scales, F. L.	-Waynesboro.
Schley, John S.	-Savanuah.
Seidell, Chas. W	-Atlanta.
Sessions, M. M.	
Shumate, I. E.	Dalton.
Simmons, Wm. E.	_Lawrenceville.
Slaton, John M.	-Atlanta.
Smith, A. W	
Smith, Burton	- Atlanta.
Smith, Cuyler	
Smith, E. A.	
Smith, Hoke	-Atlanta.
Spalding, Jack J.	- Atlanta.
Spence, W. N.	
Steed, C. P.	
Strickland, John J.	_Athens.
Strohecker, H. F.	- Macon.
Stubbs, J. M	-Dublin.
Terrell, J. M.	
Thomas, G. D.	
Thomas, G. E., Jr.	
Thomas, L. W.	- Atlanta
Thompson, W. S.	
Thornton, C. J.	
Tompkins, H. B.	-Atlanta.
Turner, C. A.	- Macon.
Turner, W. A	_Newnan.
Tye, J. L.	_Atlanta.
Wade, U. P.	
Washington, H. V.	- Macon.
Weil, S	
West, T. B	
West, W. S	
Whitehead, James	
Whitfield, Bolling	
Whitfield, Robert	
•	-

Williams, E. T.	Atlanta.
Williams, J. S.	-Waycross.
Wilson, L. A.	-Waycross.
Wimberley, Minter	_Macon.
Wimberley, Olin J	_Macon.
Wimbish, W. A.	_Columbus.
Wingfield, W. B	_Eatontor.
Womack, Emmett	-Covington.
Woolley, Vasser	_Atlanta.
Worrill, J. H.	_Columbus.
Wright, A. C.	-Savannab.
Zahner, Robert	-Atlanta.

# Do We Need More Judges on Supreme Court?

At the October election the people will vote on a proposed amendment of the Constitution, increasing the number of Supreme Court Judges from three to five.

Is this a good thing for the people as a whole?

What are the facts? By them let this question be decided.

The people will vote right if they know the facts.

The more work there is to be done, the more workmen there should be to do it. The more cases there are to be decided, the more judges there should be to decide them.

The two great causes of litigation are population and property. The following parallel columns will show a comparison between the causes and sources of litigation in the Supreme Court at the time of its creation, and those existing now:

#### IN 1846.

Number of Counties and Superior Courts, 98.

#### IN 1894.

Number of Counties and Superior Courts, 187.

Increase, 47 per cent.

Number of City Courts, none.

Total courts from which cases went direct to Supreme Court, 98. Number of City Courts, 17.

Total courts from which cases go direct to Supreme Court. 154.

Increa-e, 66 per cent.

Number of Judicial Circuits, 11.

Number of Judicial Circuits, 23.

Increase 110 per cent.

Population, excluding slaves (who could not litigate) 459,559.

Georgia citizens who could litigate—only whites—.....

Population estimated, 2,000,000 (in 1890 it was 1,987,000).

Georgia citizens who could litigate...........
ALL; both white and black.

Increase in population sources of litigation, 335 per cent.

Figures showing the assessed value of property in 1845 are not at hand, but the following comparison between 1856 and

1894 will aid in showing how much larger are the property sources of litigation now than then:

#### IN 1856.

Property returned for taxation, excluding slaves, \$271,588,322.

#### IN 1898.

Property returned for taxation, excluding slaves, \$452,644,907.

Increase, 67 per cent.

The increase in wealth and population, in connection with the well known increase in variety of industrial pursuits, means an increased variety in litigation and a consequent increase of the number of difficult and practically new legal questions. Take railroad litigation—the kind of cases whose record is nearly always long and difficult of digestion. Railroad mileage in 1846 is not known but was very small; but

#### IN 1848.

Railroad Corporations in Georgia, 5.

#### IN 1894.

Railroad Corporations in Georgis, about 50.

Increase, 900 per cent.

Number of miles of railroad in Georgia, 605.

Number of miles of railroad in Georgia, 5,225.

Increase, 764 per cent.

A comparison of the 1st and 90th Volumes of Georgia Reports will show a great increase in amount and variety of work to be done by the same number of judges; for instance

#### FIRST GA.

Number of cases, 93.

#### NINETIETH GA.

Number of cases, 147.

Increase, 58 per cent.

Criminal Cases, 8.

Criminal Cases, 88.

Increase, 812 per cent.

Damage Suits, 3.

Damage Suits, 37.

Increase, 1,183 per cent.

So while the 90th Georgia has 58 per cent. more cases, yet the

kind of cases, criminal and damage, which require most time and labor in reading and digesting records, has increased by a vastly greater per cent.

The following shows the number of cases decided in the last seven years by the Supreme Courts of the States known as the Southeastern States—a group selected because of their similarity to Georgia in social and commercial conditions and in kinds of litigation:

West Virginia, 710. Virginia, 1,036. South Carolina, 1,342. North Carolina, 2,199.

Average by each court in these four States, 1.822.

### Georgia, 8,050.

Which is about 240 per cent. more than the average of the other four States.

But the vastly greater amount of work thus imposed upon each Georgia judge is shown from the fact that West Virginia Supreme Court comprises four judges; Virginia, five judges; North Carolina, five judges. Therefore, the average number of cases decided by each Supreme Court judge in these States, omitting fractions, is as follows:

West Virginia, 177.
Virginia, 207.
North Carolina, 439.
South Carolina, 447.

Average for each Judge in these four States, 817.

## Georgia, 1,016.

Average for each Georgia Judge, 1,016. Which is 322 per cent. more than average for each Judge in the other four States.

Everybody knows the importance of an opinion in each Supreme Court case, giving the reasons on which the case is decided. These opinions should be written slowly and carefully, lest they be imperfect and by their imperfections and uncertainties produce more litigation. With so few judges to write so many opinions, the Court is obliged, in most cases at present, to simply decide a case by head-notes, without giving opinions. The consequent injury to the particular litigant is comparatively trifling. But the injury done the public by the uncertainty of the law, caused by crude or hurried decisions without opinions, is incalculable.

Not only does the Court hear argument in each case, but they meet for consultation, read the records, make up the judgments, and each also submits to the full Court, when written, his opinions which are revised and corrected till they meet the approval of all.

But where there are so few judges in proportion to the number of cases, it is impossible for them to do the work as thoroughly and well.

Comparatively little of the time of these judges is spent in hearing argument. By far the greater labor is in reading the record, discussing and deciding the cases, preparing head-notes and opinions, and investigating legal authorities.

In 1877 the present Constitution was adopted. It fixed the number of Supreme judges at three. But in 1877 Georgia had not two-thirds as many people nor two-thirds as much wealth as These two things—both sources of litigation—have NEARLY DOUBLED IN THIS PERIOD.

Comparison of 58th Volume of Georgia Reports, containing cases heard by Supreme Court just before the present Constitution was adopted, with 91st Volume, the last published, shows:

58th	VOLUME.	91st VOLUME.
Criminal Cases,	22.	Criminal Cases. 47.
		Increase, 114 per cent.
Railroad Cases,	14.	Railroad Cases, 25.
		Increase, 78 per cent.

These are two kinds of cases which generally are long and tedious, and are samples of the greater labor required of the court at the present. An increase of the number of judges at the same average per cent. would give NEARLY SIX JUDGES instead of three, as now.

All the Northern and Western States, except those small ones lately admitted, have from five to nine judges on their Supreme Court bench. Several of them have also intermediate courts. which largely decrease the labors of their Supreme Courts. some might think it unfair to compare Georgia with wealthier and more populous States. So in the following we take only Southern States, and a few Northern States smaller in wealth and population than Georgia:

States having EACH FIVE SUPREME COURT JUDGES: Virginia,

North Carolina, Alabama, Louisiana, and Arkansas.

States having not less than six nor more than nine Supreme Court Judges each: Maryland, New Jersey, Delaware, ine, New Hampshire, Vermont, Connecticut.

States having FOUR SUPREME COURT Judges: West Virginia. Every one of these States has LESS WEALTH AND LESS POPU-

LATION THAN GEORGIA-most of them a good deal less.

The only Southern States, besides Georgia, having only three Supreme Court Judges each are South Carolina, Florida, and Mississippi. But Georgia's Supreme Court decides as many cases per annum as the Supreme Courts of these three other States combined.

Two successive legislatures have, by large majorities, voted in favor of increasing the Supreme Court from three to five judges. They did this after full investigation of all the facts. The last legislature voted almost unanimously that way.

The increased expense is only six thousand dollars a year. This means an increase of taxation amounting to one cent in three years for each citizen in the State. In other words, it would cost a man worth a thousand dollars one postage stamp once in three years.

In the decrease in litigation consequent on better considered and more carefully prepared decisions, the tax-payers will save a hundred times as much, probably, as the salaries of the two additional judges would cost.

Some fear an unworthy man might get on the bench.

If this is a good reason for refusing to consent to more judges when they are needed, it is equally as good a reason for abolishing all judgeships and having no judges, for we might get a bad man on the bench as it is now. In all offices we take the chances of getting competent men to fill them. If the wrong man should chance to slip in, he will soon show what he is and the people will see that he is left at home next time.

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